

# Australian Taxation Law Select



**CCH**

a Wolters Kluwer business

Legislation &  
Commentary

2010

# Australian Taxation Law Select

#### **Disclaimer**

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person. This publication is sold on the terms and understanding that (1) the authors, consultants and editors are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and (2) the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, consultants and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above, no author, consultant or editor shall have any responsibility for any act or omission of any other author, consultant or editor.

---



# Australian Taxation Law Select



**CCH**

a Wolters Kluwer business

Legislation &  
Commentary

2010

## **CCH AUSTRALIA LIMITED**

GPO Box 4072, Sydney, NSW 2001

Head Office North Ryde

Phone: (02) 9857 1300 Fax: (02) 9857 1600

Customer Support

Phone: 1 300 300 224 Fax: 1 300 306 224

[www.cch.com.au](http://www.cch.com.au)

Book Code: 39126A



# About CCH Australia Limited

CCH Australia Limited is part of a leading global organisation publishing in many countries. CCH publications cover a wide variety of topical areas, including tax, accounting, finance, superannuation, company law, contract law, conveyancing, torts, occupational health and safety, human resources and training.

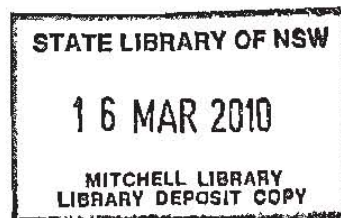
## Related publications

To keep readers abreast of changes to the income tax law, CCH publishes — in print, CD and online — a wide variety of services, from newsletters to detailed commentary analysing the law. These include the *Australian Federal Tax Reporter* (and its companion service, the *Australian Federal Income Tax Reporter*, which covers the *Income Tax Assessment Act 1997*, the *Australian Master Tax Guide*, *Foundations of Taxation Law*, the *Core Tax Legislation & Study Guide*, the *Australian Taxation Study Manual*, and the *Australian Tax Casebook*.

For all the CCH publications in this area, contact CCH Customer Support on 1300 300 224 or refer to the catalogue on CCH's website at [www.cch.com.au](http://www.cch.com.au)

## National Library of Australia Cataloguing-in-Publication entry

Title:	Australian taxation law select 2010 : legislation & commentary / Robin H. Woellner ... [et al.]
Edition:	1st ed.
ISBN:	978 1 921593 98 7 (pbk.)
Notes:	Includes index.
Subjects:	Taxation--Law and legislation--Australia.
Other Authors/ Contributors:	Woellner, R. H. (Robin H.)
Dewey Number:	343.9404



©2010 CCH Australia Limited

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping, or information retrieval systems) without the written permission of the publisher.

Printed in Australia by McPherson's Printing Group

## Foreword

The study of federal tax law in Australia has been described by some as daunting and complex. In his 1987 Foreword to the first edition of *Australian Taxation Law*, Graham Hill, QC recognised that the “torrent of decisions, judicial and administrative, . . . together with the outpourings of the legislature, have made the study of taxation almost unmanageable.”

Over twenty years on, federal taxation law continues to expand and students continue to face difficulties in identifying and understanding the areas of the law they require for their specific taxation courses.

While 2010 *Australian Taxation Law* provides a comprehensive coverage of the tax law, many tax courses can only properly cover a portion of the law. As a result large parts of the book are often not required for a particular course. Students studying tax cannot simply rely on commentary books for a complete understanding of the tax law. It is essential that they read the actual legislative provisions that underpin the commentary.

To help address these challenges, CCH is pleased to publish this first edition of *Australian Taxation Law Select — Legislation & Commentary*. This customised book combines, in a single volume, key legislative provisions dealing with Australian income tax along with carefully selected commentary from 2010 *Australian Taxation Law*. The book is ideal for students studying introductory tax courses and provides a relevant and handy alternative to purchasing full volumes of Australian income tax legislation and the complete version of the *Australian Taxation Law* text.

This edition includes selected provisions from the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax Rates Act 1986* and the *Taxation Administration Act 1953*.

This edition also includes the *full* 2010 *Australian Taxation Law* chapters on:

- Introduction to income tax law
- Non-assessable income
- Tax accounting
- Small business entities and concessions, and
- Rates and tables.

2010 *Australian Taxation Law Select — Legislation & Commentary* further contains selected parts of chapters covering:

- Tax formula, tax rates and tax offsets
  - General principles of assessable income including income from property and business
  - CGT
  - General and specific deductions
-

## ABOUT THE AUTHORS

**Robin Woellner** is Pro-Vice Chancellor (Law, Business and the Creative Arts) at James Cook University. He has practised in taxation in the private sector and in the Australian Taxation Office, and taught revenue law and advanced revenue law courses to undergraduates as well as lecturing in other commercial law subjects. He is the author/co-author of numerous books, articles and conference papers.

**Stephen Barkoczy** is a Professor of Law in the Faculty of Law at Monash University and a Consultant with Blake Dawson. Stephen is the author/co-author of several books and articles on taxation law and is a former editor of the *Journal of Australian Taxation*. In 2008, he received the Prime Minister's Award for Australian University Teacher of the Year.

**Shirley Murphy** has taught in the areas of taxation and superannuation law at a number of tertiary institutions and has acted as a taxation and superannuation consultant to industry groups. She has written in the areas of taxation and superannuation for many years, is the co-author of the *Australian Master Superannuation Guide*, and has contributed over many years to a wide range of publications including the CCH *Australian Master Tax Guide*.

**Chris Evans** is a Professor of Taxation and former Director of the Australian School of Taxation (ATAX) at the University of New South Wales. He is also an International Research Fellow at the Centre for Business Taxation at Oxford University. He is the author/co-author of numerous books, articles and conference papers, and is the editor of the *Australian Tax Review*.

**Dale Pinto** is a Professor of Taxation Law at Curtin University in Western Australia. He has accumulated over 20 years of professional, commercial and educational experience across the government sector, professional law and accounting bodies and educational institutions. Dale is a registered taxation agent and is a member of CPA Australia's Centre of Tax Excellence as well as being a member of a number of committees of the Taxation Institute of Australia (TIA). He is the author/co-author of numerous books, refereed articles and national and international conference papers, and is on the editorial board of a number of journals as well as being the Editor-in-Chief of the refereed journals, the *Journal of Applied Law and Policy* (JALAP), the *Journal of the Australasian Tax Teachers Association* (JATTA) and the *Journal of the Australasian Law Teachers Association* (JALTA). Dale was appointed to the National Tax Practitioners Board in October 2009 for a three-year term.





## CCH Acknowledgments

CCH Australia Limited wishes to thank the following who contributed to and supported this publication:

### **Managing Director**

Staffan Wensing

### **Publishing Director**

Matthew Sullivan

### **Editor-in-Chief**

Jonathan Mendel

### **Portfolio Projects Manager**

Janelle Bradley

### **Editorial**

Marcus Lai and Stephen Blackwell — Editors

### **Indexing**

Jinhong Tang — Indexer

### **Production**

Lata A. Prabakaran — Relationship Manager

Raveena Rajavetti — Team Leader

Norhayari Mansor — Subeditor

Raja Safri Effendi Raja Musa — Production Editor

### **Marketing**

Simon Wilkins — Director of Sales & Marketing

Frederik Ericson — Marketing Project Manager

Antonina Cocilovo — Marketing Executive

Mathias Johansson — Designer



# Contents

	Page
Foreword .....	v
About the Authors .....	vii
List of Abbreviations .....	xi
<b>Legislation</b>	
Income Tax Assessment Act 1936 (extracts) .....	1
Income Tax Assessment Act 1997 (extracts) .....	87
Income Tax Rates Act 1986 (extracts) .....	481
Taxation Administration Act 1953 (extracts) .....	495
<b>Commentary</b>	
1 Introduction to income tax law .....	561
2 Tax formula, tax rates and tax offsets .....	633
3 Assessable income: general principles .....	645
4 Income from personal exertion .....	673
5 Income from property .....	691
6 Income from business .....	699
7 Capital gains tax: general topics .....	751
8 Capital gains tax: concessions and special topics .....	811
9 Non-assessable income .....	827
10 General deductions .....	865
11 Specific deductions .....	977
12 Capital allowances and capital works .....	1,013
13 Tax accounting .....	1,053
14 Trading stock .....	1,119
15 Small business entities and concessions .....	1,147
16 Taxation of partnership income .....	1,169
17 Taxation of trust income .....	1,195
18 Taxation of corporate tax entities and their members .....	1,231
19 Corporate tax losses, net capital losses and bad debts .....	1,291
21 Special taxpayers and incentive schemes .....	1,307
23 Superannuation .....	1,313

---



	Page
26 Fringe benefits tax .....	1,323
34 Rates and tables .....	1,333
Case Table .....	1,351
Decisions of Boards of Review and AAT .....	1,369
Legislation Finding List .....	1,373
Rulings Finding List .....	1,385
Index .....	1,387

---



# List of Abbreviations

## List of Abbreviations

The following abbreviations are used in Australian Taxation Law Select — Legislation & Commentary.

AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ABR	Australian Business Register
ADF	Approved deposit fund
ADI	Authorised deposit-taking institution
ADJRA	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AFOF	Australian venture capital fund of funds
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ATC	<i>Australian Tax Cases (CCH)</i>
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWOTE	Average weekly ordinary time earnings
BAS	Business Activity Statement
BELC	Broad-exemption listed country
CFC	Controlled foreign company
CGT	Capital gains tax
COT	Continuity of ownership test
CPI	Consumer price index
DAC	Departure authorization certificate
DFC of T	Deputy Federal Commissioner of Taxation
DPO	Departure prohibition order
DTA	Double taxation agreement
DVS	Direct value shift
EST	(Australian) Eastern Standard Time
ESVCLP	Early stage venture capital limited partnership
ETP	Employment termination payment
FBT	Fringe benefits tax
FBTAA	<i>Fringe Benefits Tax Assessment Act 1986</i>
FC of T	Federal Commissioner of Taxation
FIF	Foreign investment fund
FIFO	First in first out
FLA	<i>Family Law Act 1975</i>
FLIC	Film licensed investment company
FMD	Farm management deposit
FOIA	<i>Freedom of Information Act 1982</i>
FTC	Foreign tax credit
FTRA	<i>Financial Transaction Reports Act 1988</i>

Index of Abbreviations	
GIC	General interest charge
GST	Goods and services tax
GVSR	General value shifting regime
HECS	Higher Education Contribution Scheme
HELP	Higher Education Loan Programme
IED	Income equalization deposit
IRDB	Industry Research and Development Board
ISC	Insurance and Superannuation Commissioner
ITAA36	<i>Income Tax Assessment Act 1936</i>
ITAA97	<i>Income Tax Assessment Act 1997</i>
ITAR	Income Tax Assessment Regulations 1997
ITR	Income Tax Regulations 1936
ITRA	<i>Income Tax Rates Act 1986</i>
ITTPA	<i>Income Tax (Transitional Provisions) Act 1997</i>
IVS	Indirect value shifting
LILO	Last in last out
LPR	Legal personal representative
LTA	<i>Land Tax Act 1956</i>
LTMA	<i>Land Tax Management Act 1956</i>
OSSA	<i>Occupational Superannuation Standards Act 1987</i>
PAYE	Pay-as-you-earn
PAYG	Pay As You Go
PDF	Pooled development fund
PPS	Prescribed payments system
PST	Pooled superannuation trust
R&D	Research and development
RBA	Running balance account
RBL	Reasonable benefit limit
RPS	Reportable payments system
RSA -	Retirement savings account
RSAA	<i>Retirement Savings Accounts Act 1997</i>
RSAR	Retirement Savings Accounts Regulations 1997
SBT	Same business test
SCTACA	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
SCTIA	<i>Superannuation Contributions Tax Imposition Act 1997</i>
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>
SGC	Superannuation guarantee charge
SGCA	<i>Superannuation Guarantee Charge Act 1992</i>
SISA	<i>Superannuation Industry (Supervision) Act 1993</i>
SISR	Superannuation Industry (Supervision) Regulations 1994
SME	Small or medium enterprise
SPOR	Shorter period of review (taxpayers)



List of Abbreviations	
SSAA	<i>Small Superannuation Accounts Act 1995</i>
STCT	Small Taxation Claims Tribunal
STS	Simplified Tax System
TAA	<i>Taxation Administration Act 1953</i>
TFN	Tax file number
TLIP	<i>Tax Law Improvement Project</i>
TPTACA	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>
UAP	Uniform administrative penalty
VCF	Venture capital franking
VCLP	Venture capital limited partnership
VCMP	Venture capital management partnership



# INCOME TAX ASSESSMENT ACT 1936 (Extracts)

## TABLE OF PROVISIONS

### Section

#### PART I — PRELIMINARY

...

6 Interpretation

...

#### PART III — LIABILITY TO TAXATION

##### Division 1 — General

...

21 Where consideration not in cash

21A Non-cash business benefits

...

##### Division 2 — Income

...

##### *Subdivision D — Dividends*

...

44 Dividends

...

##### Division 3 — Deductions

##### *Subdivision A — General*

51AAA Deductions not allowable in certain circumstances

...

51AK Agreements for the provision of non-deductible non-cash business benefits

...

82A Deductions for expenses of self-education

...

##### *Subdivision H — Period of deductibility of certain advance expenditure*

82KZL Interpretation

...

82KZM Expenditure by small business entities and individuals incurring non-business expenditure

...

82KZMD Business expenditure and non-business expenditure by non-individual

...

##### Division 5 — Partnerships

90 Interpretation

91 Liability of partnerships

92 Income and deductions of partner

...

##### Division 6 — Trust income

95 Interpretation

## Section

...	
96	Trustees
...	
97	Beneficiary not under any legal disability
...	
98	Liability of trustee
...	
99	Certain trust income to be taxed as income of an individual
99A	Certain trust income to be taxed at special rate
...	
100	Beneficiary assessable in respect of certain trust income
...	
101	Discretionary trusts
101A	Income of deceased received after death
...	
	Division 6AA — Income of certain children
102AA	Interpretation
102AB	Application of Division
102AC	Persons to whom Division applies
102AD	Taxable income to which Division applies
102AE	Eligible assessable income
102AF	Employment income and business income
...	
	Division 7 — Private companies
...	
103A	Private companies
109	Excessive payments to shareholders, directors and associates deemed to be dividends
	Division 7A — Distributions to entities connected with a private company
	<i>Subdivision A — Overview of this Division</i>
109B	Simplified outline of this Division
	<i>Subdivision AA — Application of Division to non-share equity interests</i>
109BA	Application of Division to non-share dividends
	<i>Subdivision B — Private company payments, loans and debt forgiveness are treated as dividends</i>
109C	Payments treated as dividends
109D	Loans treated as dividends
109E	Amalgamated loan from a previous year treated as dividend if minimum repayment not made
109F	Forgiven debts treated as dividends
	<i>Subdivision C — Forgiven debts that are not treated as dividends</i>
109G	Debt forgiveness that does not give rise to a dividend
	<i>Subdivision D — Payments and loans that are not treated as dividends</i>
109H	Simplified outline of this Subdivision
109J	Payments discharging pecuniary obligations not treated as dividends

**Section**

109K	Inter-company payments and loans not treated as dividends
109L	Certain payments and loans not treated as dividends
109M	Loans made in the ordinary course of business on arm's length terms not treated as dividends
109N	Loans meeting criteria for minimum interest rate and maximum term not treated as dividends
109NA	Certain liquidator's distributions and loans not treated as dividends
109NB	Loans to purchase shares under employee share schemes not treated as dividends
109P	Amalgamated loans not treated as dividends in the year they are made
109Q	Commissioner may allow amalgamated loan not to be treated as dividend
109R	Some payments relating to loans not taken into account
	<i>Subdivision DA — Demerger dividends not treated as dividends</i>
109RA	Demerger dividends not treated as dividends
	<i>Subdivision DB — Other exceptions</i>
109RB	Commissioner may disregard operation of division or allow dividend to be franked
109RC	Dividend may be franked if taken to be paid because of family law obligation
109RD	Commissioner may extend period for repayments of amalgamated loan
	<i>Subdivision E — Payments and loans through interposed entities</i>
109S	Simplified outline of this Subdivision
109T	Payments and loans by a private company to an entity through one or more interposed entities
109U	Payments and loans through interposed entities relying on guarantees
109UA	Certain liabilities under guarantees treated as payments
109V	Amount of private company's payment to target entity through one or more interposed entities
109W	Private company's loan to target entity through one or more interposed entities
109X	Operation of Subdivision D in relation to payment or loan
	<i>Subdivision EA — Unpaid present entitlements</i>
109XA	Payments, loans and debt forgiveness by a trustee in favour of a shareholder etc. of a private company with an unpaid present entitlement
109XB	Amounts included in assessable income
109XC	Modifications
	<i>Subdivision F — General rules applying to all amounts treated as dividends</i>
109Y	Proportional reduction of dividends so they do not exceed distributable surplus
109Z	Characteristics of dividends taken to be paid under this Division
109ZA	No dividend taken to be paid for withholding tax purposes



**Section**

109ZB

Amount treated as dividend is not a fringe benefit

109ZC

Treatment of dividend that is reduced on account of an amount taken under this Division to be a dividend

*Subdivision G — Defined terms*

109ZD

Defined terms

109ZE

Interpretation rules about entities

...

Division 17 — Rebates

*Subdivision A — Concessional rebates*

...

159N

Rebate for certain low-income taxpayers

...

# INCOME TAX ASSESSMENT ACT 1936 (Extracts)

## PART I — PRELIMINARY

### SECTION 6 INTERPRETATION

**6(1AA) [No meaning for purposes of 1997 Act]** So far as a provision of the *Income Tax Assessment Act 1936* gives an expression a particular meaning, the provision does *not* also have effect for the purposes of the *Income Tax Assessment Act 1997* (the *1997 Act*), or for the purposes of Schedule 1 to the *Taxation Administration Act 1953*, except as provided in the 1997 Act or in that Schedule.

**6(1) [Definitions]** In this Act, unless the contrary intention appears:

*100% subsidiary* has the same meaning as in the *Income Tax Assessment Act 1997*.

*accrued leave transfer payment* has the meaning given by section 6G.

*adjusted fringe benefits total* of a taxpayer for a year of income is the amount worked out using the formula:

$$\begin{array}{l} \text{Taxpayer's reportable} \\ \text{fringe benefits total} \end{array} \quad \times \quad (1 - \text{FBT rate})$$

where:

*FBT rate* is the rate of tax set by the *Fringe Benefits Tax Act 1986* for the FBT year (as defined in the *Fringe Benefits Tax Assessment Act 1986*) beginning on the 1 April just before the start of the year of income.

*AFOF* means an Australian venture capital fund of funds within the meaning of subsection 118-410(3) of the *Income Tax Assessment Act 1997*.

*agent* includes:

- (a) every person who in Australia, for or on behalf of any person out of Australia holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act.

*Agriculture Secretary* has the meaning given by the *Income Tax Assessment Act 1997*.

*allowable deduction* means a deduction allowable under this Act.

*amount paid-up* on a share means the amount (if any), including any premium, paid on that share.

*amount unpaid* on a share means the amount (if any) unpaid on that share.

*apportionable deductions* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*approved form* has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

*Arts Department* has the meaning given by the *Income Tax Assessment Act 1997*.

*Arts Minister* has the meaning given by the *Income Tax Assessment Act 1997*.

*Arts Secretary* has the meaning given by the *Income Tax Assessment Act 1997*.

*assessable income* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*assessment* means:

- (a) the ascertainment of the amount of taxable income (or that there is no taxable income) and of the tax payable on that taxable income (or that no tax is payable); or
  - Note 1: A taxpayer does not have a taxable income if the taxpayer's deductions equal or exceed the taxpayer's assessable income: see subsection 4-15(1) of the *Income Tax Assessment Act 1997*.
  - Note 2: A taxpayer may have no tax payable on an amount of taxable income if that income is below the tax-free threshold or if the taxpayer's tax offsets reduce the taxpayer's basic income tax liability to nil.
- (b) for a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J — the ascertainment of the net income of the trust as defined by section 102D (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or
- (c) for a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R — the ascertainment of the net income of the trust as defined by section 102M (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or
- (d) for any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust — the ascertainment of so much of the net income of the trust estate as is net income in respect of which the trustee is liable to pay tax (or that there is no net income in respect of which the trustee is so liable) and of the tax payable on that net income (or that no tax is payable); or
- (e) the ascertainment of the amount of interest payable under section 102AAM (about distributions from non-resident trust estates); or
- (f) the ascertainment of an amount of additional tax under section 128TE; or
- (g) the ascertainment of an amount of tax under section 159GZZZZH; or
- (h) the ascertainment of the amount of income tax payable on the no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that no tax is payable); or
- (i) the ascertainment of an amount of FHSA misuse tax (within the meaning of the *Income Tax Assessment Act 1997*) (or that no tax is payable).

*Australian superannuation fund* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*bank* or *banker* includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.



**base interest rate** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**business** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**capital gain** has the same meaning as in the *Income Tax Assessment Act 1997*.

**capital loss** has the same meaning as in the *Income Tax Assessment Act 1997*.

**capital proceeds** has the same meaning as in the *Income Tax Assessment Act 1997*.

**CGT asset** has the same meaning as in the *Income Tax Assessment Act 1997*.

**CGT event** has the same meaning as in the *Income Tax Assessment Act 1997*.

**child** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**Commissioner** means the Commissioner of Taxation.

**Commonwealth education or training payment** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**Commonwealth securities** means bonds, debentures, stock or other securities issued under an Act, but does not include:

- (a) securities (not being securities to which paragraph (b) applies) issued in respect of a loan raised outside Australia unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be Commonwealth securities for the purposes of this Act; or
- (b) securities issued after 12 April 1976 by a bank.

**company** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**complying approved deposit fund** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**complying superannuation fund** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**consolidated group** has the same meaning as in the *Income Tax Assessment Act 1997*.

**constituent document**, in relation to a company, means the memorandum and articles of association of the company, or any rules or other document constituting the company or governing its activities.

**corporate tax entity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**corporate tax rate** has the same meaning as in the *Income Tax Assessment Act 1997*.

**cost base** of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

**creditable acquisition** has the meaning given by section 195-1 of the GST Act.

**debenture**, in relation to a company, includes debenture stock, bonds, notes and any other securities of the company, whether constituting a charge on the assets of the company or not.

**debt interest** has the same meaning as in the *Income Tax Assessment Act 1997*.



**Defence Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Defence Act 1903*; and
- (b) is administered by the Defence Minister.

**Defence Minister** has the meaning given by the *Income Tax Assessment Act 1997*.

**Defence Secretary** means the Secretary of the Defence Department.

**demerged entity** has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

**demerger** has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

**demerger allocation** means:

- (a) the total market value of the allocation represented by the ownership interests issued by the demerged entity in itself under a demerger to the owners of ownership interests in the head entity of the demerger group; or
- (b) the total market value of the allocation represented by the ownership interests disposed of by a member of a demerger group under a demerger to the owners of ownership interests in the head entity; or
- (c) the total of both of those market values.

**demerger dividend** means that part of a demerger allocation that is assessable as a dividend under subsection 44(1) or that would be so assessable apart from subsections 44(3) and (4).

**demerger group** has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.

**demerger subsidiary** has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.

**demerging entity** has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

**depreciating asset** has the same meaning as in the *Income Tax Assessment Act 1997*.

**Deputy Commissioner** means a Deputy Commissioner of Taxation.

**distribution**, when used in a franking context, has the same meaning as in the *Income Tax Assessment Act 1997*.

**dividend** includes:

- (a) any distribution made by a company to any of its shareholders, whether in money or other property; and
- (b) any amount credited by a company to any of its shareholders as shareholders;

but does not include:

- (d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company; or

- (e) moneys paid or credited, or property distributed, by a company for the redemption or cancellation of a redeemable preference share if:
  - (i) the company gives the holder of the share a notice when it redeems or cancels the share; and
  - (ii) the notice specifies the amount paid-up on the share immediately before the cancellation or redemption; and
  - (iii) the amount is debited to the company's share capital account;
    - except to the extent that the amount of those moneys or the value of that property, as the case may be, is greater than the amount specified in the notice as the amount paid-up on the share; or
- (f) a reversionary bonus on a life assurance policy.

**Division 230 financial arrangement** has the same meaning as in the *Income Tax Assessment Act 1997*.

**dual resident investment company** has the meaning given by section 6F.

**Education Department** has the meaning given by the *Income Tax Assessment Act 1997*.

**Education Secretary** means the Secretary of the Education Department.

**Employment Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Fair Work Act 2009*; and
- (b) is administered by the Employment Minister.

**Employment Minister** means the Minister administering section 1 of the *Fair Work Act 2009*.

**Employment Secretary** means the Secretary of the Employment Department.

**employment termination payment** has the same meaning as in the *Income Tax Assessment Act 1997*.

**equity holder** has the same meaning as in the *Income Tax Assessment Act 1997*.

**equity interest** has the same meaning as in the *Income Tax Assessment Act 1997*.

**ESVCLP** means an early stage venture capital limited partnership within the meaning of subsection 118-407(4) of the *Income Tax Assessment Act 1997*.

**exempt entity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**exempt income** has the meaning given by section 6-20 of the *Income Tax Assessment Act 1997*.

**Families Secretary** has the meaning given by the *Income Tax Assessment Act 1997*.

**FHSA** has the meaning given by the *First Home Saver Accounts Act 2008*.

**FHSA trust** has the meaning given by the *First Home Saver Accounts Act 2008*.

**foreign superannuation fund** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**frankable distribution** has the same meaning as in the *Income Tax Assessment Act 1997*.

**franked part** of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.



*franking credit* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franking debit* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franking deficit tax* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franking surplus* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franks with an exempting credit* has the same meaning as in the *Income Tax Assessment Act 1997*.

*friendly society* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*friendly society dispensary* means an approved pharmaceutical chemist within the meaning of Part VII of the *National Health Act 1953*, being a friendly society, or a friendly society body, within the meaning of that Part.

*fringe benefit* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*full self-assessment taxpayer*, for a year of income (the *current year*), means any of the following:

- (a) a company;
- (b) the trustee of a trust that is a corporate unit trust in relation to the current year for the purposes of Division 6B of Part III;
- (c) the trustee of a trust that is a public trading trust in relation to the current year for the purposes of Division 6C of Part III;
- (d) the trustee of a complying approved deposit fund or a non-complying approved deposit fund in relation to the current year;
- (e) the trustee of a complying superannuation fund or a non-complying superannuation fund in relation to the current year;
- (f) the trustee of a pooled superannuation trust in relation to the current year;
- (g) the trustee of an FHSA trust in relation to the current year.

Note: A corporate limited partnership is taken to be a company under section 94J, so it will fall within paragraph (a) of this definition.

*fund payment* has the same meaning as in the *Income Tax Assessment Act 1997*.

*general insurance company* has the same meaning as in the *Income Tax Assessment Act 1997*.

*general insurance policy* has the same meaning as in the *Income Tax Assessment Act 1997*.

*general interest charge* means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

*general partner* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*GST Act* means the *A New Tax System (Goods and Services Tax) Act 1999*.

*head company* of a consolidated group or a MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

*head entity* of a demerger group has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.



**Health Department** means the Department that:

- (a) deals with matters arising under section 1 of the *National Health Act 1953*; and
- (b) is administered by the Health Minister.

**Health Minister** means the Minister administering section 1 of the *National Health Act 1953*.

**Health Secretary** means the Secretary of the Health Department.

**hold**, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**holder**, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**Housing Secretary** has the meaning given by the *Income Tax Assessment Act 1997*.

**Immigration Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Migration Act 1958*; and
- (b) is administered by the Immigration Minister.

**Immigration Minister** means the Minister administering section 1 of the *Migration Act 1958*.

**Immigration Secretary** means the Secretary of the Immigration Department.

**income from personal exertion** or **income derived from personal exertion** means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, any amount that is included in the assessable income of the taxpayer by reason of section 393-15 of Schedule 2G, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include:

- (a) interest, unless the taxpayer's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to the taxpayer for goods supplied or services rendered by him in the course of his business; or
- (b) rents, dividends or non-share dividends.

**income from property** or **income derived from property** means all income not being income from personal exertion.

**income tax** or **tax** means income tax imposed as such by any Act, as assessed under this Act, but, except in section 260, does not include mining withholding tax or withholding tax.

**insurance business** has the same meaning as in the *Insurance Act 1973*.

**insurance funds**, in relation to a company, means all the Australian statutory funds of the company and all other funds maintained by the company in respect of the life assurance business of the company.



*interest income*, in relation to a taxpayer, means income consisting of interest, or a payment in the nature of interest, in respect of:

- (a) money lent, advanced or deposited; or
- (b) credit given; or
- (c) any other form of debt or liability;

whether security is given or not, other than:

- (d) an amount to the extent to which it is a return on an equity interest in a company; or
- (e) interest derived by the taxpayer from a transaction directly related to the active conduct of a trade or business; or
- (f) interest derived by the taxpayer from carrying on a banking business or any other business whose income is principally derived from the lending of money; or
- (g) interest received by the taxpayer during a year of income from a foreign company, where:
  - (i) at any time during the year of income, the taxpayer had (or would have had, if the taxpayer were a company and a resident), a voting interest, within the meaning of section 334A, amounting to at least 10% of the voting power, within the meaning of that section, in that company; and
  - (ii) during the year of income or the preceding year of income, the company has not derived an amount of interest income exceeding 10% of the total profits derived by the company during the same year.

*international tax sharing treaty*:

- (a) means an agreement between Australia and another country under which Australia and the other country share tax revenues from activities undertaken in an area identified by or under the agreement; and
- (b) does not include an agreement within the meaning of the *International Tax Agreements Act 1953*.

*life assurance company* has the meaning given to *life insurance company* by the *Income Tax Assessment Act 1997*.

*life assurance policy* has the meaning given to *life insurance policy* by the *Income Tax Assessment Act 1997*.

*life assurance premium* has the meaning given to *life insurance premium* by the *Income Tax Assessment Act 1997*.

*limited partner* has the same meaning as in the *Income Tax Assessment Act 1997*.

*limited partnership* has the same meaning as in the *Income Tax Assessment Act 1997*.

*liquidator* means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company.

*loss year* has the same meaning as in the *Income Tax Assessment Act 1997*.

*managed investment trust* has the same meaning as in the *Income Tax Assessment Act 1997*.

*MEC group* has the same meaning as in the *Income Tax Assessment Act 1997*.

*member* of a consolidated group or MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

*minerals* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*mining withholding tax* means income tax payable in accordance with section 128V.

*mortgage* includes any charge, lien or encumbrance to secure the repayment of money.

*mutual life assurance company* means a life assurance company the profits of which are divisible only among the policy holders.

*natural resource* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*net capital gain* has the same meaning as in the *Income Tax Assessment Act 1997*.

*net capital loss* has the same meaning as in the *Income Tax Assessment Act 1997*.

*net GST* has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

*net input tax credit* has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

*non-assessable non-exempt income* has the meaning given by the *Income Tax Assessment Act 1997*.

*non-complying approved deposit fund* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*non-complying superannuation fund* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*non-entity joint venture* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*non-equity share* has the same meaning as in the *Income Tax Assessment Act 1997*.

*non-resident* means a person who is not a resident of Australia.

*non-share capital account* has the same meaning as in the *Income Tax Assessment Act 1997*.

*non-share capital return* has the same meaning as in the *Income Tax Assessment Act 1997*.

*non-share distribution* has the same meaning as in the *Income Tax Assessment Act 1997*.

*non-share dividend* has the same meaning as in the *Income Tax Assessment Act 1997*.

*non-share equity interest* has the same meaning as in the *Income Tax Assessment Act 1997*.

*ordinary class* has the same meaning as in the *Income Tax Assessment Act 1997*.

*ordinary income* has the same meaning as in the *Income Tax Assessment Act 1997*.

*outstanding claims* at the end of a year of income under general insurance policies issued by a general insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

*over-franking tax* has the same meaning as in the *Income Tax Assessment Act 1997*.



*ownership interest* has the meaning given by section 125-60 of the *Income Tax Assessment Act 1997*.

*paid* in relation to dividends or non-share dividends includes credited or distributed.

*paid-up share capital* of a company means the amount standing to the credit of the company's share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

*parent* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*part of a distribution that is franked with an exempting credit* has the same meaning as in the *Income Tax Assessment Act 1997*.

*part of a distribution that is franked with a venture capital credit* has the same meaning as in the *Income Tax Assessment Act 1997*.

*partnership* has the same meaning as in the *Income Tax Assessment Act 1997*.

*passive commodity gain*, in relation to a taxpayer, in relation to a year of income, means a gain realised by the taxpayer in a year of income from disposing of a forward contract or a futures contract, or a right or option in respect of a forward contract or a futures contract, in respect of any thing (a *commodity*):

- (a) that is capable of delivery under an agreement for its delivery; and
- (b) that is not an instrument creating or evidencing a chose in action;

unless the contract, right or option relates to the carrying on by the taxpayer of a business:

- (c) of producing or processing the commodity; or
- (d) that involves the use of the commodity as a raw material in a production process.

*passive income*, in relation to a taxpayer, in relation to a year of income means:

- (a) dividends (within the meaning of this section) and non-share dividends paid to the taxpayer in the year of income; or
- (b) unit trust dividends (within the meaning of Division 6B or 6C) paid to the taxpayer in the year of income; or
- (c) a distribution made to the taxpayer in the year of income that is taken to be a dividend because of section 47; or
- (d) an amount that is taken to be a dividend paid to the taxpayer in the year of income because of section 47A or 108 or Division 7A of Part III; or
- (e) interest income derived by the taxpayer in the year of income; or
- (f) annuities derived by the taxpayer in the year of income; or
- (g) income derived by the taxpayer by way of rent (within the meaning of Part X) in the year of income; or
- (h) royalties derived by the taxpayer in the year of income; or
- (i) an amount derived by the taxpayer in the year of income as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right; or
- (j) profits of a capital nature that accrued to the taxpayer in the year of income; or
- (k) passive commodity gains that accrued to the taxpayer in the year of income; or

- (l) an amount included in the assessable income of the taxpayer of the year of income under section 102AAZD, 456, 457, 459A or 529;

but does not include:

- (m) an amount that arose from an asset necessarily held by the taxpayer in connection with an insurance business actively carried on by the taxpayer; or
- (n) an amount included in the taxpayer's assessable income under Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes).

**PDF** (pooled development fund) means a company that is a PDF within the meaning of the *Pooled Development Funds Act 1992*, but does not include such a company in the capacity of a trustee.

**PDF component**, in relation to a company that becomes a PDF during the year of income and is still a PDF at the end of the year of income, means:

- (a) in a case where the amount that, if:
  - (i) the period beginning at the start of the year of income and ending immediately before the company becomes a PDF were a year of income of the company; and
  - (ii) the period (*the PDF notional year*) beginning when the company becomes a PDF and ending at the end of the year of income were a year of income of the company; and
  - (iii) paragraph (c) of the definition of *taxable income* were omitted;
 

would be the company's taxable income of the PDF notional year is \$1 or more — that amount; or
- (b) otherwise — a nil amount.

**permanent establishment**, in relation to a person (including the Commonwealth, a State or an authority of the Commonwealth or a State), means a place at or through which the person carries on any business and, without limiting the generality of the foregoing, includes:

- (a) a place where the person is carrying on business through an agent;
- (b) a place where the person has, is using or is installing substantial equipment or substantial machinery;
- (c) a place where the person is engaged in a construction project; and
- (d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both of those persons — the place where the goods are manufactured, assembled, processed, packed or distributed;

but does not include:

- (e) a place where the person is engaged in business dealings through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his business as a commission agent or broker and does not receive remuneration otherwise than at a rate customary in relation to dealings of that kind, not being a place where the person otherwise carries on business;



- (f) a place where the person is carrying on business through an agent:
  - (i) who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person; or
  - (ii) whose authority extends to filling orders on behalf of the person from a stock of goods or merchandise situated in the country where the place is located, but who does not regularly exercise that authority;
 not being a place where the person otherwise carries on business; or
- (g) a place of business maintained by the person solely for the purpose of purchasing goods or merchandise.

*person* includes a company.

*pooled superannuation trust* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*prescribed dual resident* means a company that satisfies either of the following conditions:

- (a) the first condition is that:
  - (i) the company is a resident of Australia within the meaning of subsection 6(1); and
  - (ii) there is an agreement (within the meaning of the *International Tax Agreements Act 1953*) in force in respect of a foreign country; and
  - (iii) the agreement contains a provision that is expressed to apply where, apart from the provision, the company would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and
  - (iv) that provision has the effect that the company is, for the purposes of the agreement, a resident solely of the foreign country;
- (b) the alternative condition is that the company:
  - (i) is a resident of Australia within the meaning of subsection 6(1) for no other reason than that it carries on business in Australia and has its central management and control in Australia; and
  - (ii) it is also a resident of another country; and
  - (iii) its central management and control is in another country.

*primary production business* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*private ancillary fund* has the meaning given by section 426-105 in Schedule 1 to the *Taxation Administration Act 1953*.

*private company*, in relation to a year of income, means a company that is a private company in relation to that year of income for the purposes of Division 7 of Part III.

*proclaimed superannuation standards day* means 1 July 1990.

*provider*, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

*prudential standards* has the same meaning as in the *Income Tax Assessment Act 1997*.

**rebate income** of an individual for a year of income is the sum of:

- (a) the individual's taxable income for the year of income; and
- (b) the individual's reportable superannuation contributions for the year of income; and
- (c) the individual's total net investment loss for the year of income; and
- (d) the individual's adjusted fringe benefits total for the year of income.

**recognised large credit union** has the meaning given by section 6H.

**recognised medium credit union** has the meaning given by section 6H.

**recognised small credit union** has the meaning given by section 6H.

**reduced cost base** of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

**relative** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**reportable fringe benefits total** has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

**reportable superannuation contributions** has the same meaning as in the *Income Tax Assessment Act 1997*.

**Research Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Australian Research Council Act 2001*; and
- (b) is administered by the Research Minister.

**Research Minister** means the Minister administering section 1 of the *Australian Research Council Act 2001*.

**Research Secretary** means the Secretary of the Research Department.

**resident** or **resident of Australia** means:

- (a) a person, other than a company, who resides in Australia and includes a person:
  - (i) whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia;
  - (ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia; or
  - (iii) who is:
    - (A) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
    - (B) an eligible employee for the purposes of the *Superannuation Act 1976*; or
    - (C) the spouse, or a child under 16, of a person covered by sub-paragraph (A) or (B); and
- (b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.



*resident trust for CGT purposes* has the same meaning as in the *Income Tax Assessment Act 1997*.

*return* on a debt interest or equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

*return of income* means a return of income, or of profits or gains of a capital nature, or of both income and such profits or gains.

*royalty* or *royalties* includes any amount paid or credited, however described or computed, and whether the payment or credit is periodical or not, to the extent to which it is paid or credited, as the case may be, as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);
- (da) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
  - (i) satellite; or
  - (ii) cable, optic fibre or similar technology;
- (db) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
  - (i) satellite; or
  - (ii) cable, optic fibre or similar technology;
- (dc) the use of, or the right to use, some or all of the part of the spectrum (within the meaning of the *Radiocommunications Act 1992*) specified in a spectrum licence issued under that Act;
- (e) the use of, or the right to use:
  - (i) motion picture films;
  - (ii) films or video tapes for use in connexion with television; or
  - (iii) tapes for use in connexion with radio broadcasting; or
- (f) a total or partial forbearance in respect of:
  - (i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or any such equipment as is mentioned in paragraph (b);
  - (ii) the supply of any such knowledge or information as is mentioned in paragraph (c) or of any such assistance as is mentioned in paragraph (d);
  - (iia) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (da);



- (iib) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (db);
- (iic) the use of, or the granting of the right to use, some or all of such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (dc); or
- (iii) the use of, or the granting of the right to use, any such property as is mentioned in paragraph (e).

*RSA* has the same meaning as in the *Retirement Savings Accounts Act 1997*.

*RSA provider* has the same meaning as in the *Retirement Savings Accounts Act 1997*.

*Second Commissioner* means a Second Commissioner of Taxation.

*share* in a company has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*share capital account* has the same meaning as in the *Income Tax Assessment Act 1997*.

*shareholder* includes member or stockholder.

*shareholders' funds* has the same meaning as in the *Life Insurance Act 1995*.

*shortfall interest charge* means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

*small business entity* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*social security law* has the meaning given by the *Social Security Act 1991*.

*spouse* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*subsidiary member* of a consolidated group or a MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

*superannuation benefits* means individual personal benefits, pensions or retiring allowances.

*superannuation fund* means:

- (a) a scheme for the payment of superannuation benefits upon retirement or death; or
- (b) a superannuation fund within the definition of "superannuation fund" in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

*superannuation fund for foreign residents* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*superannuation lump sum* has the same meaning as in the *Income Tax Assessment Act 1997*.

*tainted*, in relation to a company's share capital account, has the same meaning as in the *Income Tax Assessment Act 1997*.

*taxable Australian property* has the same meaning as in the *Income Tax Assessment Act 1997*.

*taxable income* has the same meaning as in the *Income Tax Assessment Act 1997*.

*taxable supply* has the meaning given by section 195-1 of the GST Act.



*tax cost is set* has the same meaning as in the *Income Tax Assessment Act 1997*.

*tax loss* has the same meaning as in the *Income Tax Assessment Act 1997*.

*taxpayer* means a person deriving income or deriving profits or gains of a capital nature.

*this Act* includes:

- (a) the *Income Tax Assessment Act 1997*; and
- (b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to:
  - (i) this Act or the *Income Tax Assessment Act 1997*; or
  - (ii) Schedule 1 to the *Taxation Administration Act 1953*; and
- (c) Schedule 1 to the *Taxation Administration Act 1953*.

Note: Subsection (1AA) of this section prevents definitions in the *Income Tax Assessment Act 1936* from affecting the interpretation of the *Income Tax Assessment Act 1997*.

*Timor Sea Treaty* means the Treaty defined by subsection 5(1) of the *Petroleum (Timor Sea Treaty) Act 2003*.

*total net investment loss* has the same meaning as in the *Income Tax Assessment Act 1997*.

*Trade Department* means the Department that:

- (a) deals with matters arising under section 1 of the *Export Market Development Grants Act 1997*; and
- (b) is administered by the Trade Minister.

*Trade Minister* means the Minister administering section 1 of the *Export Market Development Grants Act 1997*.

*Trade Secretary* means the Secretary of the Trade Department.

*trading stock* has the meaning given by section 70-10 of the *Income Tax Assessment Act 1997*.

*Tribunal* means the Administrative Appeals Tribunal.

*trustee* in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes:

- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
- (b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability.

*unfranked part* of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

*value of the outstanding claims liability* of a general insurance company under general insurance policies has the meaning given by section 321-20 in Schedule 2J.

*value of the outstanding claims liability* of a company for workers' compensation claims has the meaning given by section 323-15 in Schedule 2J.

*value of the unearned premium reserve* of a general insurance company under general insurance policies has the meaning given by section 321-60 in Schedule 2J.

**VCLP** means a venture capital limited partnership within the meaning of subsection 118-405(2) of the *Income Tax Assessment Act 1997*.

**VCMP** means a venture capital management partnership.

**venture capital deficit tax** has the same meaning as in the *Income Tax Assessment Act 1997*.

**venture capital management partnership** has the meaning given by subsection 94D(3).

**Veterans' Affairs Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Veterans' Entitlements Act 1986*; and
- (b) is administered by the Veterans' Affairs Minister.

**Veterans' Affairs Minister** means the Minister administering section 1 of the *Veterans' Entitlements Act 1986*.

**Veterans' Affairs Secretary** means the Secretary of the Veterans' Affairs Department.

**withholding tax** has the same meaning as in the *Income Tax Assessment Act 1997*.

**work and income support related withholding payments and benefits** means:

- (a) payments from which an amount:
  - (i) must be withheld under a provision of Subdivision 12-B (other than section 12-55), 12-C or 12-D or Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not withheld); or
  - (ii) would be required to be withheld under a provision mentioned in subparagraph (i) (other than section 12-55) apart from subsection 12-1(1A) in Schedule 1 to that Act; and
- (b) amounts included in a person's assessable income under section 86-15 of the *Income Tax Assessment Act 1997* in respect of which an amount must be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid); and
- (c) non-cash benefits in relation to which the provider of the benefit must pay an amount to the Commissioner under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid).

**Note:** The payments covered by paragraph (a) are: payments to employees and company directors, payments to office holders, return to work payments, payments under labour hire arrangements, payments of annuities, superannuation benefits, employment termination payments, payments for unused leave, benefit payments, compensation payments and payments specified by regulations.

**year of income** means an income year as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**year of tax** means the financial year for which income tax is levied.

**6(1A) [References to failure to do an act]** Unless the contrary intention appears, a reference in this Act to a failure to do an act or thing includes a reference to a refusal to do the act or thing.



**6(2AA) [Accounting period]** A reference in this Act to an accounting period adopted in lieu of a year of income includes a reference to an accounting period:

- (a) that commences or ends under section 18A; and
- (b) that would, but for that section, form part of an accounting period so adopted.

**6(2AB) [Limited partnerships]** The Commissioner may, by legislative instrument, make a determination modifying the operation of one or more provisions of this Act in relation to limited partnerships whose accounting periods commence or end under section 18A of the *Income Tax Assessment Act 1936*.

**6(2AC) [Commissioner's determination]** A determination can only be made under subsection (2AB) in order to take account of the fact that such accounting periods are of less than 12 months' duration.

**6(3) [References to companies]** The express references in this Act to companies do not imply that references to persons do not include references to companies.

**6(4) [Limit on application of dividend]** Paragraph (d) of the definition of *dividend* in subsection (1) does not apply if, under an arrangement:

- (a) a person pays or credits any money or gives property to the company and the company credits its share capital account with the amount of the money or the value of the property; and
- (b) the company pays or credits any money, or distributes property to another person, and debits its share capital account with the amount of the money or the value of the property so paid, credited or distributed.

**6(6) [Deemed business of selling at permanent establishment]** Where a place is, by virtue of paragraph (d) of the definition of *permanent establishment* in subsection (1), a permanent establishment of a person, the person shall, for the purposes of this Act, be deemed to be carrying on at or through that permanent establishment the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person at the place that is that permanent establishment.

\* \* \*

## PART III — LIABILITY TO TAXATION

### Division 1 — General

\* \* \*

#### SECTION 21 WHERE CONSIDERATION NOT IN CASH

**21(1) [Non-cash consideration]** Where, upon any transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.

**21(2) [Effect of section]** This section has effect subject to section 21A.

#### SECTION 21A NON-CASH BUSINESS BENEFITS

**21A(1) [Non-cash business benefit not convertible to cash]** For the purposes of this Act, in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash shall be treated as if it were convertible to cash.



**21A(2) [Where benefit is income derived by taxpayer]** For the purposes of this Act, if a non-cash business benefit (whether or not convertible to cash) is income derived by a taxpayer:

- (a) the benefit shall be brought into account at its arm's length value reduced by the recipient's contribution (if any); and
- (b) if the benefit is not convertible to cash — in determining the arm's length value of the benefit, any conditions that would prevent or restrict the conversion of the benefit to cash shall be disregarded.

**21A(3) [Expenditure otherwise deductible to recipient]** Where:

- (a) a non-cash business benefit is income derived by a taxpayer in a year of income; and
- (b) if the taxpayer had, at the time the benefit was provided, incurred and paid unreimbursed expenditure in respect of the provision of the benefit equal to the amount of the arm's length value of the benefit — a once-only deduction would, or would but for section 82A, and Subdivisions F, GA and G of Division 3 of this Part, of this Act, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the taxpayer in respect of a percentage (in this subsection called the *deductible percentage*) of the expenditure;

the amount that, apart from this subsection, would be applicable under subsection (2) of this section in respect of the benefit shall be reduced by the deductible percentage.

**21A(4) [Non-deductible entertainment expenditure]** Where:

- (a) a non-cash business benefit is income derived by a taxpayer in a year of income; and
- (b) a percentage (in this subsection called the *non-deductible entertainment percentage*) of any expenditure incurred by the provider in respect of the provision of the benefit is non-deductible entertainment expenditure;

the amount that, apart from this subsection, would be applicable under subsection (2) in respect of the benefit shall be reduced by the non-deductible entertainment percentage.

**21A(5) [Definitions]** In this section:

*arm's length value*, in relation to a non-cash business benefit, means:

- (a) the amount that the recipient could reasonably be expected to have been required to pay to obtain the benefit from the provider under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction; or
- (b) if such an amount cannot be practically determined — such amount as the Commissioner considers reasonable.

*income derived by a taxpayer* means income derived by a taxpayer in carrying on a business for the purpose of gaining or producing assessable income.

*non-cash business benefit* means property or services provided after 31 August 1988:

- (a) wholly or partly in respect of a business relationship; or
- (b) wholly or partly for or in relation directly or indirectly to a business relationship.

**non-deductible entertainment expenditure** means expenditure to the extent to which:

- (a) section 32-5 of the *Income Tax Assessment Act 1997* applies to the expenditure; and
- (b) but for that section, the expenditure would be deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

**once-only deduction**, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income.

**provide:**

- (a) in relation to property — includes dispose of (whether by assignment, declaration of trust or otherwise); and
- (b) in relation to services — includes allow, confer, give, grant or perform.

**recipient's contribution**, in relation to a non-cash business benefit, means the amount of any consideration paid to the provider by the recipient in respect of the provision of the benefit, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration;

**services** includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
  - (i) the performance of work (including work of a professional nature), whether with or without the provision of property;
  - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
  - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

**21A(6) [Consideration in money]** Notwithstanding section 21, the consideration referred to in the definition of **recipient's contribution** in subsection (5) of this section is consideration in money.

**21A(7) [ESS interests]** This section does not apply to an ESS interest (within the meaning of the *Income Tax Assessment Act 1997*) to which Subdivision 83A-B or 83A-C of that Act (about employee share schemes) applies.

\* \* \*



## Division 2 — Income

\* \* \*

### *Subdivision D — Dividends*

\* \* \*

#### SECTION 44 DIVIDENDS

**44(1) [Shareholder assessable income]** The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) includes:

- (a) if the shareholder is a resident:
  - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source; and
  - (ii) all non-share dividends paid to the shareholder by the company; and
- (b) if the shareholder is a non-resident:
  - (i) dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia; and
  - (ii) non-share dividends paid to the shareholder by the company to the extent to which they are derived from sources in Australia; and
- (c) if the shareholder is a non-resident carrying on business in Australia at or through a permanent establishment of the shareholder in Australia, and the company is a resident:
  - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia; and
  - (ii) non-share dividends that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are derived from sources outside Australia.

This subsection does not apply to a dividend (or non-share dividend) to the extent to which another provision of this Act that expressly deals with dividends includes some or all of the dividend (or non-share dividend) in, or excludes some or all of the dividend (or non-share dividend) from, the shareholder's assessable income.

Note 1: Some of the other provisions of this Act that expressly deal with dividends are sections 23AJ, 23AI, 23AK and 128D.

Note 2: An amount declared to be conduit foreign income is not included in assessable income under paragraph (1)(b) or (c): see section 802-15 of the *Income Tax Assessment Act 1997*.

**44(1B) [Certain dividends deemed to be paid out of profits]** Where:

- (a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share capital account of the company; or
- (b) a dividend paid by a company is a repayment by the company of an amount paid-up on a share,



the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.

**44(2) [Election to have this section apply to demergers]** Subsections (3) and (4) apply to a demerger dividend unless the head entity elects in writing, within one month after it decides which of its shareholders will receive ownership interests in the demerged entity under the demerger, that those subsections do not apply to the total demerger dividend for all shareholders.

**44(3) [Application to demerger dividend]** This section applies to the demerger dividend as if it had not been paid out of profits.

**44(4) [Assessable/exempt income]** A demerger dividend is not assessable income or exempt income.

**44(5) [CGT assets]** However, subsections (3) and (4) do not apply to a demerger dividend unless, just after the demerger, CGT assets owned by the demerged entity or a demerger subsidiary representing at least 50% by market value of all the CGT assets (or a reasonable approximation of market value) owned by the demerged entity and its demerger subsidiaries are used, directly or indirectly, in one or more businesses carried on by one or more of those entities.

**44(6) [Ownership interests]** In applying subsection (5), disregard any assets that are ownership interests in a demerger subsidiary unless they are used in a business referred to in that subsection.

**44(7) [Interpretation]** In this section:

*permanent establishment* of a person:

- (a) has the same meaning as in a double tax agreement (as defined in Part X) that relates to a foreign country and affects the person; or
- (b) has the meaning given by subsection 6(1), if there is no such agreement.

\* \* \*

## Division 3 — Deductions

### *Subdivision A — General*

#### SECTION 51AAA DEDUCTIONS NOT ALLOWABLE IN CERTAIN CIRCUMSTANCES

**51AAA(1) [Defined circumstances]** Where:

- (a) an amount is included in the assessable income of a taxpayer of a year of income by section 102-5 of the *Income Tax Assessment Act 1997* (about net capital gains) or subsection 124ZZB(1) of this Act (about notional capital gains of PDFs);
- (b) a deduction would, but for this section, be allowable under a provision listed in the table in subsection (2) to the taxpayer; and
- (c) if the amount had not been included in the assessable income the deduction would not be allowable,

the deduction is not allowable.

**51AAA(2) [Deduction provisions]** The table lists provisions allowing deductions that are affected by subsection (1). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Deduction provisions affected by net capital gains limit		
Item	Provision	Description
1	<b>Subdivision A of Division 3 of Part III</b>	General
2	section 8-1	General deductions
3	Division 25	Some expenses you can deduct
4	Division 30	Gifts or contributions
5	Division 34	Non-compulsory uniforms
6	Division 36	Tax losses of earlier income years
7	Subdivision 40-F	Facilities to conserve or convey water
8	Subdivision 40-F	Establishing grapevines
9	Subdivision 40-G	Landcare operations
10	Subdivision 40-G	Mains electricity supply
11	Subdivision 40-G	Telephone lines
12	Division 165	Income tax consequences of changing ownership or control of a company
13	Subdivision 170-A	Transfer of tax losses within wholly-owned groups of companies
14	Division 230	Financial arrangements

\* \* \*



**SECTION 51AK AGREEMENTS FOR THE PROVISION OF NON-DEDUCTIBLE NON-CASH BUSINESS BENEFITS**

**51AK(1) [Treatment of expenditure incurred by taxpayer]** Subject to this section, where:

- (a) under an agreement:
  - (i) a taxpayer incurs expenditure; and
  - (ii) a non-cash business benefit is provided to the taxpayer or another person; and
- (b) that benefit is not exclusively for use or application for the purpose of producing assessable income of the taxpayer;

the taxpayer shall be treated, for the purposes of this Act, as if so much of the expenditure as does not exceed the arm's length value of the benefit had been incurred by the taxpayer exclusively in respect of that benefit.

**51AK(2) [Where another provision deems lesser amount]** This section does not apply so as to treat particular expenditure, or the cost of particular property, to be a particular amount for a particular purpose if there is another provision of this Act that deems that expenditure, or the cost of that property, to be a lesser amount for that purpose.

**51AK(3) [Producing assessable income]** A reference in this section to producing assessable income includes a reference to:

- (a) gaining assessable income; or
- (b) carrying on a business for the purpose of gaining or producing assessable income.

**51AK(4) [Meaning of expressions]** Expressions used in this section and in section 21A have the same respective meanings in this section as they have in that section.

**51AK(5) [Definitions]** In this section:

*agreement* means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

*expenditure* includes a loss or outgoing.

\* \* \*

**SECTION 82A DEDUCTIONS FOR EXPENSES OF SELF-EDUCATION**

**82A(1) [Exclusion of first \$250]** Where a deduction is, or but for this section would be, allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of a year of income in respect of expenses of self-education, the deduction, or the aggregate of the deductions, so allowable to the taxpayer in respect of those expenses shall not be greater than the amount by which the net amount of expenses of self-education exceeds \$250.

**82A(2) [Definitions]** In this section:

*educational assistance* means amounts (other than amounts in the nature of an allowance for maintenance or accommodation) payable under a scheme for the provision by the Commonwealth of assistance for secondary education, technical or tertiary education or post-graduate study.



**expenses of self-education** means expenses necessarily incurred by the taxpayer for or in connection with a prescribed course of education but does not include:

- (a) a payment made to an institution of higher education to which Chapter 4 of the *Higher Education Funding Act 1988* applies in respect of a contribution payable under that Chapter; or
- (ab) a payment made to the Open Learning Agency of Australia in respect of any charge payable in respect of a unit of study undertaken by the taxpayer for the purposes of an approved course of study within the meaning of Chapter 5 of the *Higher Education Funding Act 1988*; or
- (b) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth under Chapter 5A of that Act; or
- (ba) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
- (bb) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth under Chapter 4 of that Act; or
- (c) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth or to a participating corporation under Chapter 2B of the *Social Security Act 1991* or Part 4A of the *Student Assistance Act 1973*.

**net amount of expenses of self-education** means the amount ascertained by subtracting from the total amount of expenses of self-education incurred by the taxpayer in the year of income the sum of:

- (a) any payment or payments of educational assistance that were capable of being claimed in the year of income by the taxpayer or by another person in respect of the taxpayer other than:
  - (i) a payment the amount of which has been, or will be, included in the assessable income of the taxpayer of any year of income; or
  - (ii) a payment that was capable of being claimed in a preceding year of income; and
- (b) any payment or payments (other than a payment the amount of which has been, or will be, included in the assessable income of the taxpayer of any year of income) received by the taxpayer, or that the taxpayer was entitled to receive, in the year of income, from the taxpayer's employer, or from any other person, in respect of:
  - (i) expenses of self-education that were incurred by the taxpayer during the year of income; or
  - (ii) expenses of self-education in respect of which a deduction has been allowed, or is allowable, or in respect of which a rebate of tax has been allowed, or is allowable, in an assessment in respect of income derived by the taxpayer in a preceding year of income.

**prescribed course of education** means a course of education provided by a school, college, university or other place of education, and undertaken by the taxpayer for the purpose of gaining qualifications for use in the carrying on of a profession, business or trade or in the course of any employment.

\* \* \*

*Subdivision H — Period of deductibility of certain advance expenditure***SECTION 82KZL INTERPRETATION**

**82KZL(1) [Definitions]** In this Subdivision, unless the contrary intention appears:

*agreement* means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

*approved stock exchange* has the meaning give by section 470.

*associate* has the meaning given by section 318.

*eligible service period*, in relation to an amount of expenditure incurred under an agreement, means the period from the beginning of:

- (a) the day, or the first day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to commence being done; or
- (b) if the expenditure is incurred on a later day — the day on which the expenditure is incurred;

until the end of:

- (c) the day, or the last day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to cease being done; or
- (d) if that day or last day ends more than 10 years after the beginning of the period — 10 years after the beginning of the period.

*excluded expenditure* means an amount of expenditure:

- (a) less than \$1,000; or
- (b) required to be incurred by a law, or by an order of a court, of the Commonwealth, a State or a Territory; or
- (c) under a contract of service; or
- (d) to the extent that it is of a capital, private or domestic nature; or
- (e) that has been or is incurred after 21 September 1999 by a general insurance company in connection with the issue of a general insurance policy and was related or relates to the gross premiums derived by the company in respect of the policy; or
- (f) that has been or is incurred after 21 September 1999 by a general insurance company in payment of reinsurance premiums in respect of the reinsurance of risks covered by general insurance policies, other than reinsurance premiums that were or are paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agrees, in respect of a loss incurred by the company that is covered by the relevant policy, to pay only some or all of the excess over an agreed amount.

*pre-RBT obligation* means a contractual obligation that:

- (a) exists under an agreement at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and



## Subdiv H — Period of deductibility of certain advance expenditure

- (b) requires the payment of an amount for the doing of a thing under the agreement; and
- (c) requires the payment to be made before the doing of the thing; and
- (d) cannot be escaped by unilateral action by the party bound by the obligation to make the payment.

*research and development activities* has the meaning given by section 73B.

*transfer* includes assign.

**82KZL(2) [Expenditure incurred under an agreement]** Without otherwise limiting the generality of references in this Subdivision to expenditure being incurred under an agreement in return for the doing of a thing under the agreement:

- (a) where expenditure incurred under an agreement consists of a payment of loan interest or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the making available or continued making available, as the case requires, of the loan principal, or other amount of a similar kind, under the agreement during the period to which the payment relates; and
- (b) where expenditure incurred under an agreement consists of a payment of rent, a lease payment or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the making available or continued making available, as the case requires, of the thing rented or leased, or other thing of a similar kind, under the agreement during the period to which the payment relates; and
- (c) where expenditure incurred under an agreement consists of a payment of an insurance premium or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the provision or continued provision, as the case requires, of insurance against the risk concerned, or of a thing of a similar kind, under the agreement during the period to which the payment relates.

**82KZL(3) [Subdivision has effect]** This Subdivision has effect as if carrying on research and development activities were carrying on a business.

\* \* \*

## SECTION 82KZM EXPENDITURE BY SMALL BUSINESS ENTITIES AND INDIVIDUALS INCURRING NON-BUSINESS EXPENDITURE

**82KZM(1) [Proportion allowable]** Where:

- (a) a taxpayer incurs expenditure under an agreement entered into after 25 May 1988; and
- (aa) at least one of the following applies:
  - (i) the taxpayer is a small business entity for the year of income and has not chosen to apply section 82KZMD to the expenditure;
  - (ii) the taxpayer is an individual and the expenditure is not incurred in carrying on a business;
  - (iii) the expenditure meets a pre-RBT obligation (see subsection 82KZL(1)); and
- (b) the expenditure is not excluded expenditure; and



(ba) either:

- (i) the eligible service period for the expenditure is longer than 12 months; or
  - (ii) the eligible service period for the expenditure is 12 months or shorter but ends after the last day of the year of income after the one in which the expenditure was incurred; and
- (c) a deduction under former section 51 or section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the expenditure would, apart from this section, be allowable from the assessable income of the taxpayer of the year of income in which the expenditure is incurred;

then, for the purposes of this Act, instead of the deduction being allowable as mentioned in paragraph (c), a proportion of the deduction is allowable from the assessable income of the taxpayer of each year of income during which the whole or part of the eligible service period in relation to the expenditure occurs, being a proportion ascertained in accordance with the formula:

$$\frac{\text{Period in year}}{\text{Eligible service period}}$$

where:

*Period in year* is the number of days in the whole or the part of the eligible service period that occurs in the year of income

*Eligible service period* is the number of days in the eligible service period.

**82KZM(2) [Commercial debt forgiveness]** Subsection (1) has effect subject to Division 245 of Schedule 2C.

\* \* \*

## **SECTION 82KZMD BUSINESS EXPENDITURE AND NON-BUSINESS EXPENDITURE BY NON-INDIVIDUAL**

**82KZMD(2) [Calculation of expenditure]** For each year of income containing all or part of the eligible service period for the expenditure, the taxpayer may deduct the amount worked out using the formula:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

Note: This section does not apply to expenditure incurred by a small business entity unless the small business entity chooses to apply this section to the expenditure: see paragraph 82KZMA(2)(b).

\* \* \*

## Division 5 — Partnerships

### SECTION 90 INTERPRETATION

**90** In this Division:

*exempt income*, in relation to a partnership, means the exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident.

*net income*, in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer who was a resident, less all allowable deductions except deductions allowable under section 290-150 or Division 36 of the *Income Tax Assessment Act 1997*.

*non-assessable non-exempt income*, in relation to a partnership, means the non-assessable non-exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident.

*partnership loss*, in relation to a partnership, means the excess (if any) of the allowable deductions, other than deductions allowable under section 290-150 or Division 36 of the *Income Tax Assessment Act 1997*, over the assessable income of the partnership calculated as if the partnership were a taxpayer who was a resident.

### SECTION 91 LIABILITY OF PARTNERSHIPS

**91** A partnership shall furnish a return of the income of the partnership, but shall not be liable to pay tax thereon.

### SECTION 92 INCOME AND DEDUCTIONS OF PARTNER

**92(1)** [Assessable income; allowable deductions] The assessable income of a partner in a partnership shall include:

- (a) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

**92(2)** [Partnership loss] Subject to section 830-45 of the *Income Tax Assessment Act 1997*, if a partnership loss is incurred by a partnership in a year of income, there shall be allowable as a deduction to a partner in the partnership:

- (a) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

**92(2AA)** [Limited partnerships] However, if:

- (a) the partner is a limited partner in a partnership; and
- (b) the partnership is a VCLP, an ESVCLP, an AFOF or a VCMP during the year of income;

the amount allowable under subsection (2), in respect of the year of income, as a deduction must not exceed the amount worked out as follows:



*Method statement*

- Step 1.* Work out the sum of the amounts that the partner has contributed (the **partner's contribution**) to the partnership.
- Step 2.* Subtract the sum of all the amounts (if any) of the partner's contribution that are repaid to the partner.
- Step 3.* Subtract the sum of all deductions allowed to the partner for losses of the partnership in previous years of income.
- Step 4.* Subtract the sum of the amounts of all the debt interests issued by the partner to the extent that they are secured by the partner's interest in the partnership.

*Example:*

A limited partner contributes \$100,000 to a VCLP, having borrowed \$80,000. Because the lender values the partner's interest in the partnership at \$70,000, the partner also provides, as additional security, other assets valued at \$10,000.

If none of the partner's contribution has been repaid and the partner has not been allowed deductions for partnership losses in previous years of income, the amount allowable to the partner for a partnership loss cannot exceed \$30,000.

**92(2A) [When no application to partnership loss]** Subsection (2) does not apply to a partnership loss if the partner's interest in the partnership at the end of the year of income is:

- (a) a segregated exempt asset (as defined in the *Income Tax Assessment Act 1997*) of a life assurance company; or
- (b) a segregated current pension asset (as defined in the *Income Tax Assessment Act 1997*) of a complying superannuation fund.

**92(3) [Exempt income]** The exempt income of a partner in a partnership shall include:

- (a) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

**92(4) [Non-assessable non-exempt income of a partner]** The non-assessable non-exempt income of a partner in a partnership shall include:

- (a) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

\* \* \*



## Division 6 — Trust income

### SECTION 95 INTERPRETATION

**95(1) [Definitions]** In this Division:

*exempt income*, in relation to a trust estate, means the exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

Note: See also Division 54 of the *Income Tax Assessment Act 1997* (in particular, the provisions in section 54-70 about trusts), which provides a tax exemption for certain payments under structured settlements and structured orders.

*net income*, in relation to a trust estate, means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income and were a resident, less all allowable deductions, except deductions under Schedule 2G and except also, in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, the deductions allowable under Division 36 of the *Income Tax Assessment Act 1997* in respect of such of the tax losses of previous years as are required to be met out of corpus.

A trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

*non-assessable non-exempt income*, in relation to a trust estate, means the non-assessable non-exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

**95(2) [Resident trust estate]** For the purposes of this Division, a trust estate shall be taken to be a resident trust estate in relation to a year of income if:

- (a) a trustee of the trust estate was a resident at any time during the year of income; or
- (b) the central management and control of the trust estate was in Australia at any time during the year of income.

**95(3) [Non-resident trust estate]** In this Division, a trust estate that is not a resident trust estate in relation to a year of income is referred to as a non-resident trust estate in relation to that year of income.

\* \* \*

### SECTION 96 TRUSTEES

**96** Except as provided in this Act, a trustee shall not be liable as trustee to pay income tax upon the income of the trust estate.

\* \* \*

### SECTION 97 BENEFICIARY NOT UNDER ANY LEGAL DISABILITY

**97(1) [Assessable income; exempt income]** Subject to Division 6D, where a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate:

- (a) the assessable income of the beneficiary shall include:
  - (i) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and

- (ii) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia; and
- (b) the exempt income of the beneficiary shall include:
  - (i) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
  - (ii) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

except to the extent to which the exempt income to which that individual interest relates was taken into account in calculating the net income of the trust estate; and
- (c) the non-assessable non-exempt income of the beneficiary shall include:
  - (i) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
  - (ii) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

**97(2) [Reference to income of trust estate to which beneficiary presently entitled]** A reference in this section to income of a trust estate to which a beneficiary is presently entitled shall be read as not including a reference to income of a trust estate:

- (a) to which a beneficiary is deemed to be presently entitled by virtue of the operation of subsection 95A(2) where the beneficiary:
  - (i) is a natural person;
  - (ii) is a resident at the end of the year of income;
  - (iii) is not, in respect of that income, a beneficiary in the capacity of a trustee of another trust estate; and
  - (iv) is not a beneficiary to whom subsection 97A(1) or (1A) applies in relation to the year of income; or
- (b) to which a beneficiary is presently entitled where the beneficiary:
  - (i) is a non-resident at the end of the year of income;
  - (ii) is not a beneficiary to whom subsection (3) of this section or subsection 97A(1) or (1A) applies in relation to the year of income; and
  - (iii) is not, in respect of that income, a beneficiary in the capacity of a trustee of another trust estate.

**97(3) [Beneficiaries to whom subsection applies]** Where:

- (a) a beneficiary of a trust estate is presently entitled to a share of the income of the trust estate;
- (b) the beneficiary is a non-resident at the end of the year of income; and

(c) the beneficiary is:

- (i) a body, association, fund or organization the income of which is exempt from tax by virtue of the operation of Subdivision 50-A or section 51-5, 51-10 or 51-30 of the *Income Tax Assessment Act 1997*; or
- (ii) an organization the income of which is exempt from tax by virtue of a regulation in force under the *International Organisations (Privileges and Immunities) Act 1963*;

that beneficiary is, for the purposes of the application of this Division in relation to that beneficiary in relation to that year of income, a beneficiary to whom this subsection applies.

\* \* \*

## SECTION 98 LIABILITY OF TRUSTEE

**98(1)** Where a beneficiary of a trust estate who is under a legal disability is presently entitled to a share of the income of the trust estate, the trustee of the trust estate shall be assessed and liable to pay tax in respect of:

- (a) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (b) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

as if it were the income of an individual and were not subject to any deduction.

**98(2) [Beneficiary presently entitled by virtue of s 95A(2)]** Where a beneficiary of a trust estate:

- (a) is deemed to be presently entitled to a share of the income of the trust estate of a year of income by virtue of the operation of subsection 95A(2);
- (aa) is a natural person and is not, in respect of that share of the income of the trust estate, a beneficiary in the capacity of a trustee of another trust estate;
- (b) is not a beneficiary to whom subsection 97A(1) or (1A) applies in relation to the year of income; and
- (c) is not under a legal disability;

the trustee of the trust estate shall be assessed and liable to pay tax in respect of:

- (d) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (e) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

as if it were the income of an individual and were not subject to any deduction.

**98(2A) [Non-resident beneficiary]** If:

- (a) a beneficiary of a trust estate who is presently entitled to a share of the income of the trust estate:
  - (i) is a non-resident at the end of the year of income; and
  - (ii) is not, in respect of that share of the income of the trust estate, a beneficiary in the capacity of a trustee of another trust estate; and



- (iii) is not a beneficiary to whom section 97A applies in relation to the year of income; and
- (iv) is not a beneficiary to whom subsection 97(3) applies; and
- (b) the trustee of the trust estate is not assessed and is not liable to pay tax<sup>a</sup> under subsection (1) or (2) in respect of any part of that share of the net income of the trust estate;

subsection (3) applies to the trustee in respect of:

- (c) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (d) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

**98(3) [Liability to tax]** A trustee to whom this subsection applies in respect of an amount of net income is to be assessed and is liable to pay tax:

- (a) if the beneficiary is not a company — in respect of the amount of net income as if it were the income of an individual and were not subject to any deduction; or
- (b) if the beneficiary is a company — in respect of the amount of net income at the rate declared by the Parliament for the purposes of this paragraph.

Note: If the trust estate's net income includes a net capital gain, and the beneficiary is a company, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

**98(4) [Non-resident beneficiary a trustee of another trust]** If:

- (a) a beneficiary of a trust estate (the *first trust estate*) who is presently entitled to a share of the income of the first trust estate:
  - (i) is, in respect of that share of the income of the first trust estate, a beneficiary in the capacity of a trustee of another trust estate; and
  - (ii) is not a beneficiary to whom subsection 97(3) applies; and
- (b) a trustee of the other trust estate is a non-resident at the end of the year of income;

the trustee of the first trust estate is to be assessed and is liable to pay tax in respect of so much of that share of the net income of the first trust estate as is attributable to sources in Australia at the rate declared by the Parliament for the purposes of this subsection.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

\* \* \*

## SECTION 99 CERTAIN TRUST INCOME TO BE TAXED AS INCOME OF AN INDIVIDUAL

**99(1) [Section 99 applies only if s 99A inapplicable]** This section applies in relation to a trust estate in relation to a year of income only if section 99A does not apply in relation to that trust estate in relation to that year of income.

**99(2) [Resident trust estate: net income wholly within s 99]** Where there is no part of the net income of a resident trust estate:

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;

- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

**99(3) [Resident trust estate: net income partly within s 99]** Where there is a part of the net income of a resident trust estate:

- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
- (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

**99(4) [Non-resident trust estate: net income wholly within s 99]** Where there is no part of the net income of a trust estate that is not a resident trust estate:

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that is attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.

**99(5) [Non-resident trust estate: net income partly within s 99]** Where there is a part of the net income of a trust estate that is not a resident trust estate:

- (a) that is attributable to sources in Australia;
- (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
- (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.

## SECTION 99A CERTAIN TRUST INCOME TO BE TAXED AT SPECIAL RATE

**99A(2) [Non-application of section]** This section does not apply in relation to a trust estate in relation to a year of income, being a trust estate:

- (a) that resulted from:



- (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
- (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;
- (b) that consists of the property of a person who has become bankrupt, being property that has vested in The Official Receiver in Bankruptcy, or in a registered trustee, under the *Bankruptcy Act 1966*;
- (c) that is administered under Part XI of the *Bankruptcy Act 1966*; or
- (d) that consists of property of a kind referred to in paragraph 102AG(2)(c);

if the Commissioner is of the opinion that it would be unreasonable that this section should apply in relation to that trust estate in relation to that year of income.

**99A(3) [Matters to be considered by Commissioner]** In forming an opinion for the purposes of subsection (2):

- (a) the Commissioner shall have regard to the circumstances in which and the conditions, if any, upon which, at any time, property (including money) was acquired by or lent to the trust estate, income was derived by the trust estate, benefits were conferred on the trust estate or special rights or privileges were conferred on or attached to property of the trust estate, whether or not the rights or privileges have been exercised;
- (b) if a person who has, at any time, directly or indirectly:
  - (i) transferred or lent any property (including money) to, or conferred any benefits on, the trust estate; or
  - (ii) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege, on or to property of the trust estate whether or not the right or privilege has been exercised;

has not, at any time, directly or indirectly:

- (iii) transferred or lent any property (including money) to, or conferred any benefits on, another trust estate; or
- (iv) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege, on or to property of another trust estate, whether or not the right or privilege has been exercised;

the Commissioner shall have regard to that fact; and

- (c) the Commissioner shall have regard to such other matters, if any, as he thinks fit.

**99A(3A) [Trust estate for purposes of subsection (3)(a)]** For the purposes of the application of paragraph (3)(a) in relation to a trust estate of the kind referred to in paragraph (2)(a), a reference in that first-mentioned paragraph to the trust estate shall be read as including a reference to the person as a result of whose death the trust estate arose.



**99A(4) [Resident trust estate: net income wholly within s 99A]** Where there is no part of the net income of a resident trust estate:

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

**99A(4A) [Resident trust estate: net income partly within s 99A]** Where there is a part of the net income of a resident trust estate:

- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
- (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

**99A(4B) [Non-resident trust estate: net income wholly within s 99A]** Where there is no part of the net income of a trust estate that is not a resident trust estate:

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that is attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

**99A(4C) [Non-resident trust estate: net income partly within s 99A]** Where there is a part of the net income of a trust estate that is not a resident trust estate:

- (a) that is attributable to sources in Australia;
- (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
- (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

\* \* \*

## **SECTION 100 BENEFICIARY ASSESSABLE IN RESPECT OF CERTAIN TRUST INCOME**

**100(1) [Assessable income]** The assessable income of any beneficiary who:

- (a) is under a legal disability or is deemed to be presently entitled to any of the income of a trust estate by virtue of the operation of subsection 95A(2); and
- (b) is a beneficiary in more than one trust estate or derives income from any other source;

shall include:

- (c) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was a resident; and
- (d) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was not a resident and is also attributed to sources in Australia.

Note 1: If the net income of one or more of the trust estates includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

Note 2: An amount is not included in assessable income under this section to the extent that subsection 98A(3) already includes it: see subsection 98A(4).

**100(1A) [Amounts included in assessable income]** If:

- (a) a beneficiary in a trust estate is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2); and
- (b) the beneficiary is not a beneficiary in any other trust estate and does not derive income from any other source; and
- (c) the beneficiary would receive a refund of tax offsets under Division 67 of the *Income Tax Assessment Act 1997* for a particular year of income if the following amounts were included in the assessable income of the beneficiary for that year:
  - (i) so much of the individual interest of the beneficiary in the net income of the trust estate for that year as is attributable to a period when the beneficiary was a resident;
  - (ii) so much of the individual interest of the beneficiary in the net income of the trust estate for that year as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

then those amounts are included in the assessable income of the beneficiary for that year.



**100(1B) [Income attributable to amount taxed under subsection 98(4)]** If a beneficiary in a trust estate who is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2):

- (a) is a resident at the end of the year of income; and
- (b) is not a beneficiary in any other trust estate and does not derive income from any other source;

the assessable income of the beneficiary includes so much of the individual interest of the beneficiary in the net income of the trust estate as is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and is liable to pay tax under subsection 98(4).

Note 1: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

Note 2: A credit is available under section 98B for an appropriate part of the subsection 98(4) tax.

Note 3: An amount is not included in assessable income under this section to the extent that subsection 98A(3) already includes it: see subsection 98A(4).

**100(1C) [Payment from which amount withheld]** If a beneficiary in a trust estate who is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2):

- (a) is a resident at the end of the year of income; and
- (b) is not a beneficiary in any other trust estate and does not derive income from any other source;

the assessable income of the beneficiary includes so much of the individual interest of the beneficiary in the net income of the trust estate as is represented by or reasonably attributable to a payment from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*.

Note: A credit is available under section 18-50 in Schedule 1 to the *Taxation Administration Act 1953* for an appropriate part of the amount withheld.

**100(2) [Deduction of tax paid by trustee]** There shall be deducted from the income tax assessed against a beneficiary to whom subsection (1) or (1A) applies the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

**100(3) [Section 98B deduction]** However, an amount of tax is not to be deducted under subsection (2) from the income tax assessed against a beneficiary to the extent that the amount is deducted under section 98B from the income tax assessed against the beneficiary.

\* \* \*

## SECTION 101 DISCRETIONARY TRUSTS

**101** For the purposes of this Act, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.



**SECTION 101A INCOME OF DECEASED RECEIVED AFTER DEATH**

**101A(1) [Assessable income of trust estate]** Where in the year of income, the trustee of the estate of a deceased person receives any amount which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate and shall be deemed to be income to which no beneficiary is presently entitled.

**101A(2) [Amounts assessable under s 83-10 and 83-80 of the ITAA 1997]** Subsection (1) does not apply in relation to an amount received by the trustee of the estate of a deceased person to the extent to which, if it had been received by the deceased person during his lifetime, it would have been included in the assessable income of that person by virtue of section 83-10 or 83-80 of the *Income Tax Assessment Act 1997*.

**101A(3) [Assessable income of trust estate]** To avoid doubt, if in the year of income an amount is included in the assessable income of a deceased taxpayer under Division 82 or 302 of the *Income Tax Assessment Act 1997* in respect of a payment received by the trustee of the estate of the deceased taxpayer, that amount shall be included in the assessable income of that year of income of the trust estate.

**101A(4) [Farm management deposit amounts]** This section does not apply in relation to any amount received by the trustee of the estate of a deceased person if the amount is a farm management deposit (within the meaning of Schedule 2G), of which the deceased person was the owner, that has become repayable.

\* \* \*

**Division 6AA — Income of certain children****SECTION 102AA INTERPRETATION**

**102AA(1) [Definitions]** In this Division, unless the contrary intention appears:

**agreement** means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

**occupation** includes any office, employment, trade, business, profession, vocation or calling, but does not include a course of education at a school, college, university or similar institution.

**property** means any property, whether real or personal, and includes money.

**102AA(2) [Derivation of assessable income]** In this Division:

- (a) a reference to the derivation by a person of assessable income shall be read as including a reference to the inclusion of an amount in the assessable income of the person; and
- (b) a reference to the derivation by a person of any assessable income from particular property shall be read as including a reference to the inclusion of an amount in the assessable income of the person in respect of that property.

**102AA(3) [Share of a beneficiary of net income of trust]** In this Division, a reference to the share of a beneficiary of the net income of a trust estate shall be read as a reference to a share of the beneficiary of the net income of a trust estate:

- (a) that is included in the assessable income of the beneficiary under section 97 or 100; or
- (b) in respect of which the trustee of the trust estate is liable to be assessed and to pay tax in pursuance of section 98.

**102AA(4) [Income derived from property]** A reference in this Division to income that is derived from particular property shall be read as including a reference to income that is derived from property that, in the opinion of the Commissioner, represents that property.

## SECTION 102AB APPLICATION OF DIVISION

**102AB** This Division applies in relation to the year of income that commenced on 1 July 1979 and in relation to all subsequent years of income.

## SECTION 102AC PERSONS TO WHOM DIVISION APPLIES

**102AC(1) [Prescribed person]** For the purposes of this Division, a person is a prescribed person in relation to a year of income if:

- (a) the person is less than 18 years of age on the last day of the year of income; and
- (b) the person is not an excepted person in relation to the year of income.

**102AC(2) [Excepted person]** Subject to this section, a person (in this subsection referred to as the *minor*) is an excepted person in relation to a year of income for the purposes of this Division if, and only if:

- (b) the minor was engaged in a full-time occupation on the last day of the year of income;
- (c) the minor is a person:
  - (i) in respect of whom a carer allowance under the *Social Security Act 1991* was payable in respect of a period that included the last day of the year of income;
  - (ii) to whom a disability support pension under that Act was payable in respect of a period that included the last day of the year of income; or
  - (iii) to whom a rehabilitation allowance under that Act was payable in respect of a period that included the last day of the year of income and who, immediately before becoming eligible to receive that allowance, was eligible to receive an invalid pension under that Act;
- (d) the Commissioner:
  - (i) has received a certificate issued by a legally qualified medical practitioner certifying that the minor is:
    - (A) a disabled child, or a disabled adult, within the meaning of Part 2.19 of the *Social Security Act 1991*; or
    - (B) a person who has a continuing inability to work within the meaning of Part 2.3 of the *Social Security Act 1991* or is permanently blind; and
  - (ii) is satisfied that, on the last day of the year of income, the minor was a person of the kind mentioned in sub-subparagraph (i)(A) or (B);
- (e) a double orphan pension was payable in respect of the minor under the *Social Security Act 1991* in respect of a period that included the last day of the year of income;



- (f) but for section 1003 of the *Social Security Act 1991*, a double orphan pension would have been payable in respect of the minor under that Act in respect of a period that included the last day of the year of income; or
- (g) the Commissioner:
  - (i) has received a certificate issued by a legally qualified medical practitioner certifying that the minor is a person who, by reason of a permanent disability, is unlikely to be able to engage in a full-time occupation; and
  - (ii) is satisfied that, on the last day of the year of income, the minor was such a person.

**102AC(3) [Interpretation — subsection (2)(e) and (f)]** Where:

- (a) a double orphan pension was payable, or would, but for section 1003 of the *Social Security Act 1991*, have been payable, in respect of a person under that Act in respect of a period during a year of income, being a period that included the last day of the year of income; and
- (b) during the whole of the period referred to in paragraph (a), the person was wholly or substantially dependent for support on a relative or relatives of the person,

that person shall not be taken by virtue of paragraph (2)(e) or (f) to be an excepted person in relation to the year of income.

**102AC(4) [Interpretation — subsection (2)(g)]** Where:

- (a) the Commissioner is of the opinion that, during a period during a year of income, being a period that included the last day of the year of income, a person was a person who, by reason of a permanent disability, was unlikely to be able to engage in a full-time occupation; and
- (b) during the whole of the period referred to in paragraph (a), the person was wholly or substantially dependent for support on a relative or relatives of the person;

that person shall not be taken, by virtue of paragraph (2)(g), to be an excepted person in relation to the year of income.

**102AC(5) [Wholly or substantially dependent for support]** For the purposes of subsections (3) and (4), a person shall be taken to have been wholly or substantially dependent for support on a relative or relatives of the person during any period during which that person resided with a relative or relatives of the person unless the contrary is established to the satisfaction of the Commissioner.

**102AC(6) [Full-time occupation]** Subject to this section, a person shall be taken, for the purposes of subsection (2), to have been engaged in a full-time occupation on the last day of a year of income if, and only if:

- (a) the person was, on the last day of the year of income, a person engaged in a full-time occupation; or
- (b) in a case to which paragraph (a) does not apply — the person was engaged in a full-time occupation during the year of income for a period of not less than 3 months or for periods the aggregate of which is not less than 3 months.



**102AC(7) [Full-time education during income year]** Where:

- (a) during a period during a year of income, a person was engaged in a full-time occupation; and
- (b) during the year of income and after the expiration of that period, the person was engaged in a course of full-time education at a school, college, university or similar institution,

no regard shall be had to that period in determining whether the person is to be taken, by virtue of paragraph (6)(b), to have been engaged in a full-time occupation on the last day of the year of income.

**102AC(8) [Commissioner's discretion]** A person shall not be taken to have been engaged in a full-time occupation on the last day of a year of income unless the Commissioner is satisfied that, on that day:

- (a) the person had the intention of engaging in a full-time occupation or full-time occupations during the whole or a substantial part of the next succeeding year of income; and
- (b) the person did not have the intention of engaging in a course of full-time education at a school, college, university or similar institution at any time during the next succeeding year of income.

**SECTION 102AD TAXABLE INCOME TO WHICH DIVISION APPLIES**

**102AD** The eligible taxable income of a year of income of a person who is a prescribed person in relation to the year of income is the amount (if any) remaining after deducting from the eligible assessable income of the person of the year of income:

- (a) any deductions allowable to the person in relation to the year of income that relate exclusively to that eligible assessable income;
- (b) so much of any other deductions (other than apportionable deductions) allowable to the person in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that eligible assessable income; and
- (c) the amount that bears to the apportionable deductions allowable to the person in relation to the year of income the same proportion as the amount that, but for this paragraph, would be the eligible taxable income of the person of the year of income bears to the sum of:
  - (i) the taxable income of the person of the year of income; and
  - (ii) the apportionable deductions allowable to the person in relation to the year of income.

**SECTION 102AE ELIGIBLE ASSESSABLE INCOME**

**102AE(1) [Eligible assessable income]** For the purposes of this Division, the eligible assessable income of a year of income of a person is so much of the assessable income of the person of the year of income as is not excepted assessable income.

**102AE(2) [Excepted assessable income]** Subject to this section, an amount included in the assessable income of a person (in this subsection referred to as the *minor*) is excepted assessable income to the extent to which the amount:

- (a) is employment income or business income;

- (b) is derived by the minor from the investment of any property transferred to the minor:
- (i) by way of, or in satisfaction of a claim for, damages in respect of:
    - (A) loss by the minor of parental support; or
    - (B) personal injury to the minor, any disease suffered by the minor or any impairment of the minor's physical or mental condition;
  - (ii) pursuant to any law relating to worker's compensation;
  - (iii) pursuant to any law relating to the payment of compensation in respect of criminal injuries;
  - (iv) directly as the result of the death of another person and under the terms of a life assurance policy;
  - (v) directly as the result of the death of another person and out of a provident, benefit, superannuation or retirement fund;
  - (vi) directly as the result of the death of another person by an employer of the deceased person;
  - (vii) out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances; or
  - (viii) as the result of a family breakdown (see section 102AGA);
- (c) is derived by the minor from the investment of any property:
- (i) that devolved upon the minor from the estate of a deceased person;
  - (ii) that was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred within 3 years after the date of the death of the deceased person; or
  - (iii) that was acquired by the minor as the beneficial owner of a verifiable prize in a legally authorized and conducted lottery;
- (d) not being business income, is included in the assessable income of the minor under section 92;
- (e) is included in the assessable income of the minor under section 97 or 100; or
- (f) is derived by the minor from the investment of any property that, in the opinion of the Commissioner, represents accumulations of:
- (i) excepted assessable income derived by the minor during a year of income in relation to which this Division applies;
  - (ii) assessable income derived by the minor during a year of income in relation to which this Division does not apply, being assessable income that would, in the opinion of the Commissioner, have been excepted assessable income if this Division were applicable in relation to the year of income during which the assessable income was derived; or
  - (iii) exempt income derived by the minor to which subparagraph (i) or (ii) would, in the opinion of the Commissioner, apply if that exempt income had been assessable income.

**102AE(3) [Interpretation — subsection (2)(d)]** A reference in paragraph (2)(d) to an amount (not being business income) that is included in the assessable income of a person under section 92 in respect of the individual interest of the person in the net income of a partnership shall be read as a reference to so much of an amount so



included in that assessable income as, in the opinion of the Commissioner, is attributable to so much of the assessable income of the partnership as would, in the opinion of the Commissioner, have been excepted assessable income if the assessable income of the partnership had been derived by that person.

**102AE(4) [Interpretation — subsection (2)(e)]** A reference in paragraph (2)(e) to an amount included in the assessable income of a person under section 97 or 100 shall be read as not including a reference to any part to which this Division applies of an amount included in that assessable income under either of those sections.

**102AE(5) [Interpretation — subsection (2)(a)]** Subject to subsections (6) and (7), a reference in paragraph (2)(a), in relation to a person (in this subsection referred to as the *minor*), to business income shall, in relation to any business income derived by the minor during a year of income from the carrying on of a business, be read as a reference to:

- (a) in a case where during the year of income, the business was carried on by the minor either alone or in partnership with another person who was, or other persons each of whom was, under the age of 18 years on the first day of the year of income — so much of that business income as the Commissioner considers fair and reasonable having regard to:
  - (i) the extent to which, during the year of income, the minor had the real and effective conduct and control of the business and participated in the operations and activities of the business;
  - (ii) the extent to which the minor had the real and effective control over the disposal of income derived by the minor from the business during the year of income;
  - (iii) the extent to which the capital of the business consisted of property contributed by the minor, being property the income from which would, in the opinion of the Commissioner, be excepted assessable income in relation to the minor; and
  - (iv) such other matters (if any) as the Commissioner thinks fit; and
- (b) in any other case — the amount that, in the opinion of the Commissioner, is reasonable remuneration by way of salary or wages for any services rendered by the minor during the year of income in the production of assessable income of the business increased by such amount (if any) as, in the opinion of the Commissioner, is reasonable, having regard to the extent to which the capital of the business consisted of property contributed by the minor the income from which would, in the opinion of the Commissioner, be excepted assessable income in relation to the minor.

**102AE(6) [Non-arm's length transactions]** Subject to subsection (7), if any 2 or more parties to:

- (a) the derivation of the excepted assessable income mentioned in subsection (2); or
- (b) any act or transaction directly or indirectly connected with the derivation of that excepted assessable income;

were not dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction, the excepted assessable income is only so much (if any) of that income as would have been derived if they had been dealing with each



other at arm's length in relation to the derivation, or in relation to the act or transaction.

**102AE(7) [Arrangements to secure income not eligible assessable income]** Subsection (2) does not apply in relation to assessable income derived by a person directly or indirectly under or as a result of an agreement that was entered into or carried out by any person (whether before or after the commencement of this subsection) for the purpose, or for purposes that included the purpose, of securing that that assessable income would not be eligible assessable income.

**102AE(8) [Incidental purpose disregarded]** In determining whether subsection (7) applies in relation to an agreement, no regard shall be had to a purpose that is a merely incidental purpose.

**102AE(9) [Interpretation — subsection (2)(b)]** Where:

- (a) any assessable income is derived by a person from the investment of any property transferred to the person by way of, or in satisfaction of a claim for, damages in respect of:
  - (i) loss by the person of parental support; or
  - (ii) personal injury to the person, any disease suffered by the person or any impairment of the person's physical or mental condition; and
- (b) that property was transferred to that person otherwise than in pursuance of an order of a court;

paragraph (2)(b) applies only to so much (if any) of that assessable income as the Commissioner considers fair and reasonable.

**102AE(10) [Interpretation — subsection (2)(c)(ii)]** Where:

- (a) the assessable income of a person (in this subsection referred to as the *minor*) of a year of income:
  - (i) includes an amount derived by the minor from property that:
    - (A) was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person; and
    - (B) was so transferred within 3 years after the date of the death of the deceased person; but does not include any amount that:
      - (C) was derived by the minor from property that devolved upon the minor from the estate of that deceased person; or
      - (D) is included in the assessable income of the minor under section 97 or 100 in respect of the share of the minor of the net income of a trust estate that resulted from a will or codicil of that deceased person, an order of a court that varied or modified the provisions of a will or codicil of that deceased person, a partial intestacy of that deceased person or an order of a court that varied or modified the application, in relation to the estate of that deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; or

- (ii) includes an amount derived by the minor from property that:
  - (A) was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person; and
  - (B) was so transferred within 3 years after the date of death of the deceased person;
 and also includes an amount or amounts to which sub-subparagraph (i)(C) or (D) applies; and
- (b) the amount to which subparagraph (a)(i) applies or the sum of the amounts to which subparagraph (a)(ii) applies, as the case may be, exceeds the amount that, in the opinion of the Commissioner, would have been included in the assessable income of the minor of the year of income in respect of an amount or amounts derived by the minor from property that, in the opinion of the Commissioner, would have devolved upon or for the benefit of the minor from the estate of that deceased person if that deceased person had died intestate;

the amount of the assessable income of the minor of the year of income that would, apart from this subsection, have been excepted assessable income by virtue of subparagraph (2)(c)(ii) shall be reduced by the amount of that excess.

## SECTION 102AF EMPLOYMENT INCOME AND BUSINESS INCOME

**102AF(1) [Employment income]** A reference in this Division to employment income is to be read as a reference to:

- (a) work and income support related withholding payments and benefits ; and
- (b) payments made for services rendered or to be rendered; and
- (c) compensation, sickness or accident payments:
  - (i) made to an individual because of the individual's or another's incapacity for work; and
  - (ii) calculated at a periodical rate.

**102AF(3) [Business income]** In this Division, a reference, in relation to a person in relation to a year of income, to business income shall be read as a reference to income derived by the person during the year of income from carrying on of a business either alone or together with another person or other persons.

\* \* \*

## Division 7 — Private companies

\* \* \*

## SECTION 103A PRIVATE COMPANIES

**103A(1) [Private company]** For the purposes of this Division, a company is a private company in relation to the year of income if the company is not a public company in relation to the year of income.

**103A(2) [Public company]** For the purposes of subsection (1), a company is, subject to the succeeding provisions of this section, a public company in relation to the year of income if:

- (a) shares in the company, not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits, were listed for



quotation in the official list of a stock exchange, being a stock exchange in Australia or elsewhere, as at the last day of the year of income;

- (b) at all times during the year of income, the company was a co-operative company as defined by section 117;
- (c) the company has not, at any time since its formation, been carried on for the purposes of profit or gain to its individual members and was, at all times during the year of income, prohibited by the terms of its constituent document from making any distribution, whether in money, property or otherwise, to its members or to relatives of its members; or
- (d) the company is:
  - (i) a mutual life assurance company;
  - (ii) a friendly society dispensary;
  - (iii) a body constituted by a law of the Commonwealth or of a State or Territory and established for public purposes, not being a company within the meaning of the law in force in a State or Territory relating to companies;
  - (iv) a company in which a Government or a body referred to in subparagraph (iii) had a controlling interest on the last day of the year of income; or
  - (v) in relation to the year of income, a subsidiary of a public company.

**103A(3) [Company not public company under subsection (2)(a) or (b)]** Subject to subsection (5), a company is not, by virtue of paragraph (2)(a) or (b), a public company for the purposes of subsection (1) in relation to the year of income where:

- (a) at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, shares representing not less than three-quarters of the value of the shares in the company, other than shares entitled to a fixed rate of dividend only;
- (b) at any time during the year of income, not less than three-quarters of the voting power in the company was capable of being exercised by one person or by persons not more than 20 in number;
- (c) not less than three-quarters of:
  - (i) the amount of any dividend paid by the company during the year of income; or
  - (ii) if more than one dividend was paid by the company during the year of income — the total amount of all the dividends paid by the company during the year of income,

was paid to one person or to persons not more than 20 in number; or

- (d) a dividend was not paid by the company during the year of income but the Commissioner is of the opinion that, if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than 20 in number.

**103A(3A) [Company not public company under subsection (2)(d)(iv)]** Subject to subsection (3B), a company shall not be taken for the purposes of subsection (1) to be a public company in relation to a year of income by reason that a body constituted and established as mentioned in subparagraph (2)(d)(iii) (in this subsection referred to

as the *public body*) had a controlling interest in the company on the last day of the year of income if:

(a) by reason of:

- (i) any of the provisions contained in the constituent document of the company as in force on the last day of the year of income; or
- (ii) any right, power, option or agreement in existence on the last day of the year of income that related to the management or conduct of the affairs of the company, including any right, power, option or agreement that related to the issue, allotment or redemption of shares, or the grant, withdrawal or variation of rights in respect of shares,

the exercise by the public body of any right or power in connexion with the company (being a right or power relating to the exercise by the public body of a controlling interest in the company), whether on the last day of the year of income or at any later time, could have been prevented;

- (b) rights or powers of the public body in connexion with the company were exercised during the year of income otherwise than for the benefit of the public body or were not exercised in circumstances where it might reasonably have been expected that they would have been exercised;
- (c) any shares in the company that were held by the public body on the last day of the year of income were acquired by the public body for no consideration or for a consideration that, in the ordinary course of commercial dealing, would be considered inadequate;
- (d) in pursuance of any agreement entered into before the end of the year of income, the public body agreed to dispose of all or any of the shares in the company that were held by the public body on the last day of the year of income, being a disposal that was to take place at any time after the last day of the year of income;
- (e) a dividend was paid by the company at a time during the year of income when the public body had a controlling interest in the company, and less than one-half of the amount of that dividend was paid to the public body; or
- (f) a dividend was not paid by the company at a time during the year of income when the public body had a controlling interest in the company but the Commissioner is of the opinion that, if a dividend had been paid by the company at such a time, less than one-half of the amount of the dividend would have been paid to the public body.

**103A(3B) [Subsection (3A) inapplicable — Commissioner's discretion]** Subsection (3A) does not apply in relation to a company in relation to a year of income if the Commissioner is satisfied that no shares in the company that were held by the public body referred to in that subsection on the last day of the year of income were allotted or transferred to the public body for the purpose, or for purposes that included the purpose, of enabling the company to be treated as a public company in relation to the year of income for the purposes of subsection (1), or in pursuance of an agreement entered into, or a course of conduct engaged in, for the purpose, or for purposes that included the purpose, of enabling the company to be so treated.

**103A(3C) [Application limited]** Paragraph (3A)(c) does not apply to an acquisition that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.



**103A(4) [Public company subsidiary]** Subject to subsection (4D), a company is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if:

- (a) at all times during the year of income all the shares in the first-mentioned company were beneficially owned by a company which, or companies each of which, is a public company for the purposes of subsection (1) in relation to the year of income of that company (in this subsection referred to as *the corresponding year of income*) that corresponds with the first-mentioned year of income but which is not, or none of which is:
  - (i) a company to which paragraph (2)(c) applies in relation to the corresponding year of income; or
  - (ii) a subsidiary of a public company for the purposes of this section in relation to the corresponding year of income by reason of subsection (4B);
- (b) the corresponding year of income, or each of the corresponding years of income, referred to in paragraph (a) ended on the same day as the year of income first-mentioned in that paragraph;
- (c) at no time during the year of income was a person or were 2 or more persons in a position to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company so as to prevent the relevant holding company or holding companies from exercising for its or their own benefit the whole of the voting power in the first-mentioned company or from receiving for its or their own benefit the whole of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and
- (d) no agreement was entered into before or during the year of income by virtue of which a person or 2 or more persons would be in a position after the year of income so to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company.

**103A(4A) [Position to affect rights of parent public company]** For the purposes of paragraphs (4)(c) and (d), a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of the relevant holding company or holding companies in connexion with the company first-mentioned in subsection (4) (in this subsection referred to as *the first-mentioned company*) if at that time that person had or has a right, power or option (whether by virtue of any provision in the constituent document of the first-mentioned company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the relevant holding company or holding companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.

**103A(4B) [Non-wholly-owned public company subsidiary]** Subject to subsection (4D), a company that is not, by virtue of subsection (4), a subsidiary of a public company for the purposes of this section in relation to the year of income is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if:

- (a) at all times during the year of income the voting power in the first-mentioned company was controlled, or was capable of being controlled, by a listed company or listed companies, either directly or through one or more companies,

trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies;

- (b) at all times during the year of income a listed company or listed companies had a right to receive, either directly or through one or more companies, trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies, more than one-half of any dividends that might be paid by the first-mentioned company and more than one-half of any distribution that might be made of capital of the first-mentioned company;
- (c) at no time during the year of income was a person or were 2 or more persons in a position to affect rights of the listed company or listed companies in connexion with the first-mentioned company so as to prevent the listed company or listed companies from exercising for its or their own benefit control of the voting power in the first-mentioned company or from receiving for its or their own benefit more than one-half of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and
- (d) no agreement was entered into before or during the year of income by virtue of which a person or 2 or more persons would be in a position after the year of income so to affect rights of the listed company or listed companies in connexion with the first-mentioned company.

**103A(4C) [Position to affect rights of listed company]** For the purposes of paragraphs (4B)(c) and (d), a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of a listed company or listed companies in connexion with another company if at that time that person had, or has, a right, power or option (whether by virtue of any provision in the constituent document of the other company or of any company interposed between the listed company or listed companies and the other company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the listed company or listed companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.

**103A(4D) [Management or conduct of subsidiary's affairs]** A company (in this subsection and subsection (4E) referred to as *the company concerned*) that would, apart from this subsection, be a subsidiary of a public company for the purposes of this section in relation to the year of income shall be deemed, for the purposes of this section, not to be a subsidiary of a public company in relation to the year of income if the Commissioner is satisfied that:

- (a) where the company concerned would, apart from this subsection, be such a subsidiary in relation to the year of income by virtue of subsection (4) — the affairs of the company concerned were managed or conducted in the year of income in the interests of persons other than the relevant holding company or holding companies; or
- (b) where the company concerned would, apart from this subsection, be such a subsidiary in relation to the year of income by virtue of subsection (4B) — the affairs of the company concerned were managed or conducted in the year of income without proper regard to the interests of the relevant holding company or holding companies.



**103A(4E)** [Matters to be taken into account for purpose of subsection (4D)] In considering whether the affairs of the company concerned were managed or conducted in the year of income as mentioned in subsection (4D), the Commissioner shall have regard to:

- (a) the circumstances in which the relevant holding company or holding companies acquired a direct or indirect beneficial interest or interests in shares in the company concerned (whether the interest was, or the interests were, acquired before or during the year of income) and, in particular, whether those circumstances were capable of explanation by reference to ordinary commercial dealing;
- (b) the provisions of the constituent document of the company concerned as in force during the year of income that related to the management or conduct of the affairs of that company, including the provisions of the constituent document that related to the appointment or removal of directors, the issue, allotment or redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;
- (c) the nature and extent of any right, power, option or agreement in existence during the year of income that related to the management or conduct of the affairs of the company concerned, including any right, power, option or agreement that related to the appointment or removal of directors, the issue, allotment or redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;
- (d) whether rights of the relevant holding company or holding companies in connexion with the company concerned were exercised during the year of income otherwise than for the benefit of the relevant holding company or holding companies or were not exercised in circumstances where it might reasonably have been expected that they would have been exercised;
- (e) the nature and source of the income derived by the company concerned during the year of income and whether the derivation by that company of that income was capable of explanation by reference to ordinary commercial dealing;
- (f) the manner in which the moneys of the company concerned were applied during the year of income and, in particular, whether they were lent to, or invested or otherwise made available for the use or benefit of, a person or persons other than the relevant holding company or holding companies and, if any such moneys were so lent, invested or made available:
  - (i) the terms and conditions upon which the moneys were so lent, invested or made available;
  - (ii) whether the lending, investment or making available of those moneys was capable of explanation by reference to ordinary commercial dealing; and
  - (iii) the connexion (if any) between that person or those persons, the directors of the company concerned and the directors of, or the beneficial owners of the shares in, the company from which the company concerned received dividends before or during the year of income;



- (g) the respective amounts of any dividends in respect of shares in the company concerned that were paid during the year of income or might reasonably be expected to be paid after that year by that company and the circumstances in which those dividends were, or might be expected to be, paid; and
- (h) any other relevant matters.

**103A(5) [Commissioner's power to treat company as public]** Where a company would not, under the preceding provisions of this section, be a public company for the purposes of subsection (1) in relation to the year of income but the Commissioner is of the opinion that, having regard to:

- (a) the number of persons who were, at any time during the year of income, capable of controlling the company and whether any of those persons was a public company;
- (b) the market value of the shares issued by the company before the end of the year of income;
- (c) the number of persons who beneficially owned shares in the company at the end of the year of income; and
- (d) any other matters that he thinks relevant,

it is reasonable that the company should be treated as a public company for the purposes of subsection (1) in relation to the year of income, the company shall be deemed to be a public company for those purposes in relation to the year of income.

**103A(5A) [Power to treat as public — tax liability]** The Commissioner may, under subsection (5), form an opinion that it is reasonable that a company should be treated as a public company for the purposes of subsection (1) in relation to a year of income notwithstanding that the forming of such an opinion by the Commissioner would impose on the company a liability to pay a greater amount of income tax than the company would otherwise be liable to pay.

**103A(6) [Commissioner's power to treat public company as private]** Notwithstanding anything in the preceding provisions of this section, the Commissioner may treat a company as not being, by virtue of paragraph (2)(a) or (b), a public company for the purposes of subsection (1) in relation to the year of income if the Commissioner is of the opinion that, by reason of:

- (a) any provisions in the company's constituent document, or in any contract, agreement or instrument, authorizing the variation or abrogation of the voting rights or rights to dividends in respect of any shares in the company or relating to the conversion, exchange or redemption of any such shares;
- (b) any contract, agreement, option or instrument under which a person has power to acquire shares in the company; or
- (c) any power or authority in a person in relation to the voting rights or rights to dividends in respect of any shares in the company,

the voting rights or rights to dividends in respect of any shares in the company were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that:

- (d) not less than three-quarters of the voting power in the company would have been capable of being exercised by one person or by persons not more than 20 in number;



- (e) not less than three-quarters of:
  - (i) the amount of any dividend paid by the company during the year of income; or
  - (ii) if more than one dividend was paid by the company during the year of income — the total amount of all the dividends paid by the company during the year of income,
 would have been paid to one person or to persons not more than 20 in number; or
- (f) in the case where the company did not pay a dividend during the year of income — if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than 20 in number.

**103A(7) [Person, relatives and nominees deemed one]** For the purposes of this section:

- (a) a person, whether or not he holds shares in the company concerned;
- (b) his relatives; and
- (c) in relation to any shares in respect of which they are such nominees, his nominees and the nominees of any of his relatives,

shall be deemed to be one person.

#### **SECTION 109 EXCESSIVE PAYMENTS TO SHAREHOLDERS, DIRECTORS AND ASSOCIATES DEEMED TO BE DIVIDENDS**

**109(1) [Payment or credit by private company to associated person]** If a private company pays or credits to an associated person an amount (in this subsection called the *excessive amount*) that is, or purports to be:

- (a) remuneration for services rendered by the associated person; or
- (b) an allowance, gratuity or compensation in consequence of the retirement of the associated person from an office or employment held by the associated person in the company, or upon the termination of any such office or employment;

so much (if any) of the excessive amount as exceeds an amount that, in the opinion of the Commissioner, is reasonable:

- (c) is not an allowable deduction; and
- (d) shall, for the purposes of this Act other than Division 11A of Part III, be deemed to be a dividend paid by the company:
  - (i) to the associated person as a shareholder in the company;
  - (ii) out of profits derived by the company; and
  - (iii) on the last day of the year of income of the company in which the excessive payment or credit is made.

Note: This section does not apply to an amount if the amount is paid to a CGT concession stakeholder under subsection 152-325(1) of the *Income Tax Assessment Act 1997* (see subsection 152-325(11)).

**109(2) [Transfer of property; associated person]** For the purposes of this section:

- (a) a transfer of property shall be deemed to be the payment of an amount equal to the value of the property; and

**Subdiv AA — Application of Division to non-share equity interests**

- (b) a reference to an associated person, in relation to a company, is a reference to:
- (i) a person who is, or has been, a shareholder in, or director of, the company; or
  - (ii) a person who is an associate, within the meaning of section 318, of a person who is, or has been, a shareholder in, or director of, the company.



## **Division 7A — Distributions to entities connected with a private company**

### *Subdivision A — Overview of this Division*

#### **SECTION 109B SIMPLIFIED OUTLINE OF THIS DIVISION**

**109B** The following is a simplified outline of this Division:

This Division treats 3 kinds of amounts as dividends paid by a private company:

- amounts paid by the company to a shareholder or shareholder's associate (see section 109C);
- amounts lent by the company to a shareholder or shareholder's associate (see sections 109D and 109E);
- amounts of debts owed by a shareholder or shareholder's associate to the company that the company forgives (see section 109F).

This treatment makes the amounts assessable income of the shareholder or associate (under section 44).

However, some payments, loans and forgiven debts are not treated as dividends. (See Subdivisions C and D.) Also, this Division does not apply to demerger dividends. (See Subdivision DA).

An amount may be treated as a dividend even if it is paid or lent by the company to the shareholder or associate through one or more interposed entities. (See Subdivision E.)

If the total of the amounts is more than the company's distributable surplus, only the part of the total equal to the distributable surplus is treated as dividends. (See section 109Y.)

This Division applies to non-share equity interests and non-share dividends in the same way as it applies to shares and dividends.

### *Subdivision AA — Application of Division to non-share equity interests*

#### **SECTION 109BA APPLICATION OF DIVISION TO NON-SHARE DIVIDENDS**

**109BA** This Division:

- (a) applies to a non-share equity interest in the same way as it applies to a share; and
- (b) applies to an equity holder in the same way as it applies to a shareholder; and
- (c) applies to a non-share dividend in the same way as it applies to a dividend.



*Subdivision B — Private company payments, loans and debt forgiveness are treated as dividends***SECTION 109C PAYMENTS TREATED AS DIVIDENDS**

**109C(1) When private company is taken to pay a dividend.** A private company is taken to pay a dividend to an entity at the end of the private company's year of income if the private company pays an amount to the entity during the year and either:

- (a) the payment is made when the entity is a shareholder in the private company or an associate of such a shareholder; or
- (b) a reasonable person would conclude (having regard to all the circumstances) that the payment is made because the entity has been such a shareholder or associate at some time.

Note 1: Some payments do not give rise to dividends under Subdivision D. This section also does not give rise to a dividend if the amount is paid to a CGT concession stakeholder under subsection 152-325(1) of the *Income Tax Assessment Act 1997* (see subsection 152-325(1)).

Note 2: A private company is treated as making a payment to a shareholder or shareholder's associate if an interposed entity makes a payment to the shareholder or associate. See Subdivision E.

**109C(2) Amount of dividend.** The dividend is taken to equal the amount paid, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

**109C(3) What is a payment to an entity?** In this Division, *payment* to an entity means:

- (a) a payment to the extent that it is to the entity, on behalf of the entity or for the benefit of the entity; and
- (b) a credit of an amount to the extent that it is:
  - (i) to the entity; or
  - (ii) on behalf of the entity; or
  - (iii) for the benefit of the entity; and
- (c) a transfer of property to the entity.

**109C(3A) Loans are not payments.** However, a loan to an entity is not a payment to the entity.

Note: Payments converted to loans before the private company's lodgment day are treated as loans (see subsection 109D(4A)).

**109C(4) Value of payment by transfer of property.** The amount of a payment consisting of a transfer of property is the amount that would have been paid for the transfer by parties dealing at arm's length less any consideration given by the transferee for the transfer. (The amount of a payment is nil if the consideration given by the transferee equals or exceeds the amount that would have been paid at arm's length for the transfer.)

**SECTION 109D LOANS TREATED AS DIVIDENDS**

**109D(1) Loans treated as dividends in year of making.** A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the *current year*) if:

- (a) the private company makes a loan to the entity during the current year; and
- (b) the loan is not fully repaid before the lodgment day for the current year; and
- (c) Subdivision D does not prevent the private company from being taken to pay a dividend because of the loan at the end of the current year; and
- (d) either:
  - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
  - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Note 1: Some repayments cannot be counted for the purpose of this subsection. See section 109R.

Note 2: A private company is treated as making a loan to a shareholder or shareholder's associate if an interposed entity makes a loan to the shareholder or associate. See Subdivision E.

**109D(1AA) Amount of dividend.** The amount of the dividend taken under subsection (1) to have been paid is the amount of the loan that has not been repaid before the lodgment day for the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

**109D(1A) Loans treated as dividends in year following that of making.** A private company is taken to pay a dividend to an entity at the end of the private company's year of income (the *current year*) if:

- (a) the private company made a loan to the entity during the previous year of income; and
- (b) it made the loan in the course of a winding-up of the private company by a liquidator; and
- (c) the loan is not fully repaid by the end of the current year; and
- (d) either:
  - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
  - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Subdivision D (other than section 109R) does not apply to loans covered by this subsection.

**109D(2) Amount of dividend.** The amount of the dividend taken under subsection (1A) to have been paid is the amount of the loan that has not been repaid at the end of the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

**109D(3) What is a loan?** In this Division, *loan* includes:

- (a) an advance of money; and
- (b) a provision of credit or any other form of financial accommodation; and



- (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

**109D(4) In which year of income is a loan made?** For the purposes of this Division, a loan is made to an entity at the time the amount of the loan is paid to the entity by way of loan or anything described in subsection (3) is done in relation to the entity.

**109D(4A) Payment converted to loan before lodgment day.** If:

- (a) a private company makes a payment to an entity at a time in a year of income; and
- (b) the payment is converted to a loan before the end of the private company's lodgment day for the year of income;

for the purposes of this Division, treat the events mentioned in paragraphs (a) and (b) as the private company making a loan to the entity at the time mentioned in paragraph (a).

**109D(5) Loans made before 4 December 1997.** If the terms of a loan made before 4 December 1997 are varied on or after that day by extending the term of the loan or increasing its amount, this Division applies to the loan as if it were made on the new terms when the variation occurred.

**109D(6) When is the lodgment day?** In this Division, the *lodgment day* for a private company's year of income is the earlier of:

- (a) the due date for lodgment of the private company's return of income for the year of income; and
- (b) the date of lodgment of the private company's return of income for the year of income.

## **SECTION 109E AMALGAMATED LOAN FROM A PREVIOUS YEAR TREATED AS DIVIDEND IF MINIMUM REPAYMENT NOT MADE**

**109E(1) Amalgamated loan treated as dividend in first year in which payment is less than minimum yearly repayment.** A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the *current year*) if:

- (a) the private company made an amalgamated loan to the entity in an earlier year of income; and
- (b) the amalgamated loan is not repaid at the end of the current year; and
- (c) the amount (if any) paid to the private company during the current year in relation to the amalgamated loan falls short of the minimum yearly repayment of the amalgamated loan worked out under subsection (5) for the current year; and
- (d) section 109Q does not apply in relation to the current year.

Note: The amalgamated loan does not give rise to a dividend for that year if the minimum yearly repayment is not made and the entity satisfies the Commissioner that treating the loan as a dividend would cause hardship. See section 109Q.

**109E(2) Amount of dividend.** The amount of the dividend is taken to be the amount of the shortfall mentioned in paragraph (1)(c), subject to section 109Y.



Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

**109E(3) What is an amalgamated loan?** For the purposes of this Division, a private company is taken to make a loan (the *amalgamated loan*) to a single entity during a year of income if the private company makes one or more loans (*constituent loans*) to the entity during the year, each of which:

- (a) is not fully repaid before the lodgment day for the year; and
- (b) would cause the company to be taken under section 109D to pay a dividend to the entity at the end of the year, apart from section 109N; and
- (c) has the same maximum term for the purposes of that section.

The amount of the amalgamated loan is the sum of the amounts of the constituent loans that have not been repaid before the lodgment day for the year of income in which the amalgamated loan is made.

**109E(3A) [Effect of mortgage on constituent loan]** Subsection (3B) applies if:

- (a) a private company is taken to have made an amalgamated loan (the *old amalgamated loan*) during a year of income (the *original year of income*); and
- (b) the maximum term of the old amalgamated loan under subsection 109N(3) was 7 years; and
- (c) in a later year of income (the *later year of income*):
  - (i) a constituent loan taken account of by the old amalgamated loan becomes secured by a mortgage over real property; and
  - (ii) the term of the constituent loan is extended; and
- (d) as a result of the mortgage, the maximum term of the constituent loan under subsection 109N(3) is 25 years; and
- (e) the term of the constituent loan after the extension (including the period before the extension during which the constituent loan was in existence) does not exceed 25 years.

**109E(3B) [Treatment of constituent loan]** For the purposes of this Division in relation to the later year of income and subsequent years of income:

- (a) treat the constituent loan as a new amalgamated loan that takes account of that constituent loan; and
- (b) treat the new amalgamated loan as having been made just before the start of the later year of income; and
- (c) treat the amount of the new amalgamated loan just before the start of the later year of income as the amount of the constituent loan that had not been repaid at that time; and
- (d) unless paragraph (e) applies — reduce the amount of the old amalgamated loan just before the start of the later year of income by the amount of the new amalgamated loan at that time; and
- (e) if the constituent loan was the only constituent loan taken account of by the old amalgamated loan — disregard the old amalgamated loan.

**109E(4) Payments in relation to constituent loans treated as payments in relation to amalgamated loan.** For the purposes of this Division, a payment to the private company in relation to a constituent loan in a year of income after the one in



which the constituent loan was made is taken to be a payment in relation to the amalgamated loan that takes account of the constituent loan.

**109E(5) Minimum yearly repayment.** The minimum yearly repayment of an amalgamated loan for a year of income is the amount worked out using the formula in subsection (6). However, the minimum yearly repayment of an amalgamated loan for a year of income is the amount worked out under the regulations, if they provide for working it out.

**109E(6) Formula for minimum yearly repayment.** The formula for the minimum yearly repayment for a year of income is:

$$\frac{\text{Amount of the loan not repaid by the end of the previous year of income} \times \text{Current year's benchmark interest rate}}{1 - \left[ \frac{1}{1 + \text{Current year's benchmark interest rate}} \right]^{\text{Remaining term}}}$$

where:

*current year's benchmark interest rate* is the benchmark interest rate for the year of income for which the minimum yearly repayment is being worked out.

*remaining term* is the difference between:

- (a) the number of years in the longest term of any of the constituent loans that the amalgamated loan takes account of; and
- (b) the number of years between the end of the private company's year of income in which the loan was made and the end of the private company's year of income before the year of income for which the minimum yearly repayment is being worked out;

rounded up to the next higher whole number if the difference is not already a whole number.

Note: Section 109R provides that certain payments relating to a loan are not to be taken into account for the purposes of working out the minimum yearly repayment.

**109E(7) Benchmark interest rate used to work out how much of a payment relating to amalgamated loan is a repayment.** Work out the amount of an amalgamated loan repaid by the end of a year of income on the basis that interest is payable on the balance of the loan from time to time in a year of income at a rate equal to the benchmark interest rate for the year of income.

## SECTION 109F FORGIVEN DEBTS TREATED AS DIVIDENDS

**109F(1) Forgiven debt treated as dividend.** A private company is taken to pay a dividend to an entity at the end of the private company's year of income if all or part of a debt the entity owed the private company is forgiven in that year and either:

- (a) the amount is forgiven when the entity is a shareholder in the private company, or an associate of such a shareholder; or
- (b) a reasonable person would conclude (having regard to all the circumstances) that the amount is forgiven because the entity has been such a shareholder or associate at some time.

Note: In some cases forgiving a debt does not give rise to a dividend. See section 109G.

**109F(2) Amount of dividend.** The amount of the dividend equals the amount of debt forgiven, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

**109F(3) When is a debt forgiven?** An amount of a debt is *forgiven* for the purposes of this Division if and when the amount would be forgiven under section 245-35 (except subsection 245-35(4)) of Schedule 2C, assuming the amount were a commercial debt for the purposes of Division 245 of that Schedule.

Note: Division 245 of Schedule 2C applies to forgiveness of certain commercial debts.

**109F(4) Discharge of debt by transfer of property is not forgiveness.** Despite subsection (3), an amount of debt is not forgiven for the purposes of this Division if the obligation to pay the amount is discharged by a payment to the creditor consisting of a transfer of property.

Note: Subsection 109C(4) explains how to work out the value of a payment consisting of a transfer of property.

**109F(5) Debt forgiveness by debt parking.** An amount of debt an entity (the *debtor*) owes a private company is also *forgiven* for the purposes of this Division if:

- (a) the private company assigns the right to receive payment of the amount to another entity (the *new creditor*) who is either:
  - (i) an associate of the debtor; or
  - (ii) a party to an arrangement with the debtor about the assignment; and
- (b) a reasonable person would conclude (having regard to all the circumstances) that the new creditor will not exercise the assigned right.

**109F(6) Debt forgiveness by failure to rely on obligation to pay.** An amount of debt an entity (the *debtor*) owes a private company is also *forgiven* for the purposes of this Division if a reasonable person would conclude (having regard to all the circumstances) that the private company will not insist on the entity paying the amount or rely on the entity's obligation to pay the amount. (The amount is forgiven when a reasonable person would first reach that conclusion.)

**109F(7) Forgiveness of amalgamated loan debt.** If a private company forgives an amount of debt resulting from a constituent loan taken into account in working out the amount of an amalgamated loan under subsection 109E(3), the private company is taken to forgive the same amount of the debt resulting from the amalgamated loan.

**109F(8) This section operates on only the earliest debt forgiveness.** If the same debt is forgiven for the purposes of this Division at different times under different provisions of this section, this section operates on the first forgiveness only.

Example:

Subsection (3) of this section provides that a debt is forgiven if it has not been paid by the time a statute of limitations prevents recovery of the debt. (It does this by applying subsection 245-35(2) of Schedule 2C.) The debt might already have been forgiven under subsection (6) of this section (because a reasonable person would have concluded earlier that the private company was not going to insist on payment). This section would apply to the forgiveness under subsection (6) but not the forgiveness under subsection (3).



*Subdivision C — Forgiven debts that are not treated as dividends***SECTION 109G DEBT FORGIVENESS THAT DOES NOT GIVE RISE TO A DIVIDEND**

**109G(1) Forgiveness of debt owed by company generally not treated as dividend.** A private company is not taken under this Division to pay a dividend because a debt owed to it by another company is forgiven.

Note: This does not apply to a debt owed by a company as trustee. (See section 109ZE.)

**109G(2) Forgiveness of debts under Bankruptcy Act not treated as dividends.** A private company is not taken under this Division to pay a dividend because a debt is forgiven because the debtor becomes a bankrupt or because of Part X of the *Bankruptcy Act 1966*.

**109G(3) Forgiveness of loan debt does not give rise to dividend if loan gives rise to dividend under section 109D.** A private company is not taken under section 109F to pay a dividend at the end of a year of income because of the forgiveness of an amount of a debt resulting from a loan if, because of the loan, the private company is taken:

- (a) under section 109D to pay a dividend at the end of that year or an earlier one; or
- (b) under former subsection 108(1) to pay a dividend on the last day of that year or an earlier one.

**109G(3A) Reduced dividend for forgiveness of loan debt if loan causes dividend under section 109E.** Subsection (3B) applies if:

- (a) a private company is taken under section 109F to pay a dividend at the end of a year of income because of the forgiveness of an amount of a debt resulting from a loan; and
- (b) the private company is taken under section 109E to pay a dividend at the end of an earlier year of income in relation to the loan.

**109G(3B) [Reduction amount]** The amount of the dividend mentioned in paragraph (3A)(a) is reduced by the amount of the dividend mentioned in paragraph (3A)(b) (but not below zero).

Note: There may be more than one reduction under this subsection if the private company has been taken under section 109E to pay more than one dividend in relation to the loan.

**109G(4) Commissioner may treat forgiveness as not giving rise to dividend.** A private company is not taken under this Division to pay a dividend because of the forgiveness of a debt owed by an entity if the Commissioner is satisfied that:

- (a) the debt was forgiven because payment of the debt would have caused the entity undue hardship; and
- (b) when the entity incurred the debt, the entity had the capacity to pay the debt; and
- (c) the entity lost the ability to pay the debt in the foreseeable future as a result of circumstances beyond the entity's control.

*Subdivision D — Payments and loans that are not treated as dividends***SECTION 109H SIMPLIFIED OUTLINE OF THIS SUBDIVISION**

**109H** The following is a simplified outline of this Subdivision:

This Subdivision sets out rules about payments and loans that are not treated as dividends.

The following sorts of payments are not treated as dividends:

- payments of genuine debts (section 109J);
- payments to other companies (section 109K);
- payments that are otherwise assessable or that are specifically excluded from assessable income (section 109L).

The following sorts of loans are not treated as dividends:

- loans to other companies (section 109K);
- loans that are otherwise assessable (section 109L);
- loans made in the ordinary course of business on ordinary commercial terms (section 109M);
- loans that meet criteria for minimum interest rate and maximum term (section 109N);
- certain loans and distributions by liquidators (section 109NA);
- loans that are for the purpose of funding the purchase of certain ESS interests under an employee share scheme (section 109NB).

An amalgamated loan may not be treated as a dividend if the Commissioner is satisfied that doing so would cause undue hardship. (See section 109Q.)

This Subdivision also provides for some loan repayments and interest payments to private companies to be disregarded if they are made with the intention of borrowing a similar amount from a private company later. (See section 109R.)

**SECTION 109J PAYMENTS DISCHARGING PECUNIARY OBLIGATIONS NOT TREATED AS DIVIDENDS**

**109J** A private company is not taken under section 109C to pay a dividend because of the payment of an amount, to the extent that the payment:

- (a) discharges an obligation of the private company to pay money to the entity; and
- (b) is not more than would have been required to discharge the obligation had the private company and entity been dealing with each other at arm's length.

**SECTION 109K INTER-COMPANY PAYMENTS AND LOANS NOT TREATED AS DIVIDENDS**

**109K** A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to another company.

Note: This does not apply to a payment or loan to a company in its capacity as trustee. (See section 109ZE.)



**SECTION 109L CERTAIN PAYMENTS AND LOANS NOT TREATED AS DIVIDENDS**

**109L(1) [Where payment or loan included in income]** A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to an entity, to the extent that the payment or loan would be included in the entity's assessable income apart from this Division (as it operates in conjunction with section 44).

**109L(2) [Where exclusion due to this Act]** In addition, a private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan that the private company made to an entity to the extent that a provision of this Act (other than this Division) has the effect that the payment or loan is not included in the entity's assessable income even though it would otherwise be included.

**SECTION 109M LOANS MADE IN THE ORDINARY COURSE OF BUSINESS ON ARM'S LENGTH TERMS NOT TREATED AS DIVIDENDS**

**109M** A private company is not taken under section 109D to pay a dividend because of a loan made:

- (a) in the ordinary course of the private company's business; and
- (b) on the usual terms on which the private company makes similar loans to parties at arm's length.

**SECTION 109N LOANS MEETING CRITERIA FOR MINIMUM INTEREST RATE AND MAXIMUM TERM NOT TREATED AS DIVIDENDS**

**109N(1) Criteria.** A private company that makes a loan to an entity in one of the private company's years of income is not taken under section 109D to pay a dividend at the end of the year of income because of the loan if, before the lodgment day for the year of income:

- (a) the agreement that the loan was made under is in writing; and
- (b) the rate of interest payable on the loan for years of income after the year in which the loan is made equals or exceeds the benchmark interest rate for the year; and
- (c) the term of the loan does not exceed the term (the *maximum term*) for that kind of loan worked out under subsection (3).

**109N(2) Benchmark interest rate.** The *benchmark interest rate* for the year of income is the Indicator Lending Rates — Bank variable housing loans interest rate last published by the Reserve Bank of Australia before the start of the year of income. However, the benchmark interest rate is the rate worked out under the regulations, if they provide for working it out.

**109N(3) Maximum term.** The maximum term is:

- (a) 25 years for a loan if:
  - (i) 100% of the value of the loan is secured by a mortgage over real property that has been registered in accordance with a law of a State or Territory; and
  - (ii) when the loan is first made, the market value of that real property (less the amounts of any other liabilities secured over that property in priority to the loan) is at least 110% of the amount of the loan; and
- (b) 7 years for any other loan.

## Subdiv D — Payments and loans that are not treated as dividends

However, the maximum term for a loan is the period worked out under the regulations, if they provide for working out the maximum term for that kind of loan.

**109N(3A) [Refinancing of loan to maximum of 25 years]** Reduce the maximum term under paragraph (3)(a) for a loan (the *new loan*) in accordance with subsection (3B) if:

- (a) the new loan results from the refinancing of another loan (the *old loan*); and
- (b) the maximum term of the old loan under subsection (3) was 7 years; and
- (c) the maximum term of the new loan under subsection (3) is 25 years (disregarding this subsection).

**109N(3B) [Amount of reduction]** The amount of the reduction is equal to the length of the period:

- (a) starting when the old loan was made; and
- (b) ending when the old loan was refinanced.

**109N(3C) [Refinancing of loan to maximum of 7 years]** Reduce the maximum term under paragraph (3)(b) for a loan (the *new loan*) in accordance with subsection (3D) if:

- (a) the new loan results from the refinancing of another loan (the *old loan*); and
- (b) the maximum term of the old loan under subsection (3) was 25 years; and
- (c) the maximum term of the new loan under subsection (3) is 7 years (disregarding this subsection); and
- (d) the length of the period:
  - (i) starting when the old loan was made; and
  - (ii) ending when the old loan was refinanced;
 

exceeds 18 years.

**109N(3D) [Amount of reduction]** The amount of the reduction is the excess mentioned in paragraph (3C)(d).

**109N(4) Regulations may adopt rate as published from time to time.** Regulations made for the purposes of subsection (2) may apply, adopt or incorporate a rate published in an instrument after they are made or take effect, or a rate contained in an instrument from time to time, despite any other Act.

## **SECTION 109NA CERTAIN LIQUIDATOR'S DISTRIBUTIONS AND LOANS NOT TREATED AS DIVIDENDS**

**109NA** A private company is not taken under section 109C or subsection 109D(1) to pay a dividend because of a distribution or loan made in the course of the winding-up of the company by a liquidator.

**Note:** However, if such a loan is not fully repaid by the end of the following year of income, the company will be taken to have paid a dividend under subsection 109D(1A).

## **SECTION 109NB LOANS TO PURCHASE SHARES UNDER EMPLOYEE SHARE SCHEMES NOT TREATED AS DIVIDENDS**

**109NB** A private company is not taken under section 109D to pay a dividend because of a loan made solely for the purpose of enabling the shareholder, or an associate of the shareholder, to acquire an ESS interest under an employee share scheme (within the meaning of the *Income Tax Assessment Act 1997*) to which:



- (a) Subdivision 83A-B and subsections 83A-35(3) to (9) of that Act apply; or
- (b) Subdivision 83A-C of that Act applies.

#### **SECTION 109P AMALGAMATED LOANS NOT TREATED AS DIVIDENDS IN THE YEAR THEY ARE MADE**

**109P** A private company is not taken under section 109D to pay a dividend because of an amalgamated loan it makes.

Note: A shortfall in a minimum yearly repayment of an amalgamated loan may be treated as a dividend under section 109E.

#### **SECTION 109Q COMMISSIONER MAY ALLOW AMALGAMATED LOAN NOT TO BE TREATED AS DIVIDEND**

**109Q(1) [When private company not deemed to pay dividend]** A private company is not taken under section 109E to pay a dividend at the end of one of its years of income (the *current year*) because of an amalgamated loan to an entity if:

- (a) the amount paid to the private company by the entity in the current year in relation to the loan is less than the minimum yearly repayment of the loan for the current year worked out under subsection 109E(5); and
- (b) the entity satisfies the Commissioner that:
  - (i) that amount was less than the minimum yearly repayment because of circumstances beyond the entity's control; and
  - (ii) the entity would suffer undue hardship if the private company were taken under section 109E to pay a dividend to the entity at the end of the current year because of the loan.

**109Q(2) [Matters considered]** In deciding whether he or she is satisfied, the Commissioner must consider:

- (a) the entity's capacity, at the end of the year of income in which the amalgamated loan was made, to repay the loan; and
- (b) any circumstances that have reduced the entity's capacity to repay the loan; and
- (c) whether the entity took all reasonable steps to make payments relating to the amalgamated loan during the current year equal to the minimum yearly repayment of the loan for the current year; and
- (d) whether the entity has made payments relating to the loan as soon as possible after the current year equalling the difference between:
  - (i) the minimum yearly repayment for the current year; and
  - (ii) the amount of payments made during the current year relating to the loan.

#### **SECTION 109R SOME PAYMENTS RELATING TO LOANS NOT TAKEN INTO ACCOUNT**

**109R(1) [Some payments not considered]** This section provides for some payments to a private company in relation to a loan the private company made to an entity not to be taken into account for the purpose of working out:

- (a) how much of the loan has been repaid for the purposes of sections 109D and 109E (which treat amounts of loans that have not been repaid as dividends); or
- (b) the minimum yearly repayment for the loan under subsection 109E(5).

## Subdiv D — Payments and loans that are not treated as dividends

**109R(2) [Intention to obtain loan]** A payment must not be taken into account if a reasonable person would conclude (having regard to all the circumstances) that when the payment was made the entity intended to obtain a loan from the private company of an amount similar to or larger than the payment.

**109R(3) [Set offs]** Subsection (2) does not apply to a payment made by setting off against an amount payable in relation to the loan:

- (a) a dividend payable by the private company to the entity; or
- (b) work and income support related withholding payments and benefits payable by the private company to the entity; or
- (ba) payments covered by section 12-55 in Schedule 1 to the *Taxation Administration Act 1953*; or
- (c) if the entity has transferred property to the private company — an amount equalling the difference between:
  - (i) the amount that a party at arm's length from the entity would have paid for the transfer of the property to the party; and
  - (ii) the amount that the private company has already paid the entity (by way of set-off or otherwise) for the transfer.

**109R(4) [Payments made on behalf of borrower]** Nor does subsection (2) apply to a payment made on behalf of the entity (the *borrower*) by another entity paying to the private company an amount that:

- (a) is payable by the other entity to the borrower; and
- (b) is assessable income of the borrower for the year of income in which the payment was made or an earlier year of income.

**109R(5) [Subordination of loan]** Subsection (2) does not apply to a payment if:

- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
- (b) the entity to which the old loan was made has another loan (the *primary* loan) from another entity; and
- (c) the old loan becomes subordinated to the primary loan; and
- (d) the refinancing of the old loan mentioned in paragraph (a) took place in connection with that subordination; and
- (e) that subordination arose as a result of circumstances beyond the control of the entity to which the old loan was made; and
- (f) the entity to which the old loan was made and the other entity dealt with each other at arm's length in relation to that subordination; and
- (g) the private company and the other entity dealt with each other at arm's length in relation to that subordination.

**109R(6) [Refinancing of loan to maximum of 25 years]** Subsection (2) does not apply to a payment if:

- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
- (b) the refinancing results in another loan (the *new loan*); and
- (c) the maximum term of the old loan under subsection 109N(3) was 7 years; and



- (d) the maximum term of the new loan under subsection 109N(3) is 25 years (reduced in accordance with subsection 109N(3B)).

**109R(7) [Refinancing of loan to maximum of 7 years]** Subsection (2) does not apply to a payment if:

- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
- (b) the refinancing results in another loan (the *new loan*); and
- (c) the maximum term of the old loan under subsection 109N(3) was 25 years; and
- (d) the maximum term of the new loan under subsection 109N(3) is:
  - (i) unless subparagraph (ii) applies — 7 years; or
  - (ii) if subsection 109N(3D) applies — 7 years reduced in accordance with that subsection.

### ***Subdivision DA — Demerger dividends not treated as dividends***

#### **SECTION 109RA DEMERGER DIVIDENDS NOT TREATED AS DIVIDENDS**

**109RA** This Division does not apply to a demerger dividend to which section 45B does not apply.

### ***Subdivision DB — Other exceptions***

#### **SECTION 109RB COMMISSIONER MAY DISREGARD OPERATION OF DIVISION OR ALLOW DIVIDEND TO BE FRANKED**

**109RB(1) [Honest mistake, etc]** The Commissioner may make a decision under subsection (2) if:

- (a) this Division (disregarding this section) operates with the result that:
  - (i) a private company is taken to pay a particular dividend to a particular entity (the *recipient*) under this Division; or
  - (ii) a particular amount is included, as if it were a dividend, in the assessable income of a particular entity (also the *recipient*) in relation to a private company under Subdivision EA; and
- (b) the result mentioned in paragraph (a) arises because of an honest mistake or inadvertent omission by any of the following entities:
  - (i) the recipient;
  - (ii) the private company;
  - (iii) any other entity whose conduct contributed to that result.

**109RB(2) [Commissioner's discretion]** The Commissioner may decide in writing that:

- (a) the result mentioned in paragraph (1)(a) should be disregarded (see subsection (4)); or
- (b) the dividend mentioned in subparagraph (1)(a)(i) may be franked in accordance with Part 3-6 of the *Income Tax Assessment Act 1997* (see subsection (6)).

**109RB(3) [Relevant contributing factors]** In making a decision under subsection (2) (or refusing to make such a decision), the Commissioner must have regard to the following:



- (a) the circumstances that led to the mistake or omission mentioned in paragraph (1)(b);
- (b) the extent to which any of the entities mentioned in paragraph (1)(b) have taken action to try to correct the mistake or omission and if so, how quickly that action was taken;
- (c) whether this Division has operated previously in relation to any of the entities mentioned in paragraph (1)(b), and if so, the circumstances in which this occurred;
- (d) any other matters that the Commissioner considers relevant.

**109RB(4) [Further conditions]** The Commissioner may make a decision under subsection (2) subject to any of the following kinds of condition:

- (a) a condition that the recipient or another entity must make specified payments to the private company or another entity within a specified time;
- (b) a condition that a specified requirement in this Division must be met within a specified time.

**109RB(5) [Effect of decision]** This Division is taken not to operate with the result mentioned in paragraph (1)(a) if:

- (a) the Commissioner makes a decision under paragraph (2)(a); and
- (b) if the Commissioner makes the decision subject to a condition under subsection (4) — the condition is satisfied.

**109RB(6) [Dividend not made unfrankable]** If the Commissioner makes a decision under paragraph (2)(b), subparagraph 202-45(g)(i) of the *Income Tax Assessment Act 1997* does not make the dividend mentioned in subparagraph (1)(a)(i) unfrankable.

**109RB(7) [Restriction]** Despite subsection 33(3A) of the *Acts Interpretation Act 1901*, each decision made under subsection (2) must relate only to one amount that would (disregarding this section):

- (a) be taken to be a dividend paid by the private company; or
- (b) be included, as if it were a dividend, in the assessable income of an entity.

#### **SECTION 109RC DIVIDEND MAY BE FRANKED IF TAKEN TO BE PAID BECAUSE OF FAMILY LAW OBLIGATION**

**109RC(1) [Application]** This section applies if a dividend is taken to be paid under this Division because of a family law obligation.

**109RC(2) [Dividend not made unfrankable]** Subparagraph 202-45(g)(i) of the *Income Tax Assessment Act 1997* does not make the amount of the dividend unfrankable.

**109RC(3) [Conditions for franking]** The dividend can be franked in accordance with Part 3-6 of the *Income Tax Assessment Act 1997* only if:

- (a) the dividend is franked at the private company's benchmark franking percentage for the franking period in which the dividend is taken to be paid; or
- (b) if the private company does not have a benchmark franking percentage for the period — the dividend is franked at a franking percentage of 100%.



**109RC(4) [Recipient]** For the purposes of subsection (3), if the recipient of the dividend is not a member of the private company for the purposes of Part 3-6 of the *Income Tax Assessment Act 1997*, treat that recipient as such a member.

### **SECTION 109RD COMMISSIONER MAY EXTEND PERIOD FOR REPAYMENTS OF AMALGAMATED LOAN**

**109RD(1) [Conditions]** The Commissioner may make a decision under subsection (2) if:

- (a) section 109E operates with the result that a private company is taken to pay a particular dividend to a particular entity (the *recipient*); and
- (b) the shortfall mentioned in paragraph 109E(1)(c) arises because the recipient is unable to pay the private company the minimum yearly repayment mentioned in that paragraph because of circumstances beyond the recipient's control.

**109RD(2) [Commissioner's power]** The Commissioner may decide in writing that the result mentioned in paragraph (1)(a) should be disregarded (see subsection (4)) if the recipient pays the private company the amount of the shortfall within a specified time.

**109RD(3) [Relevant matters]** In making a decision under subsection (2) (or refusing to make such a decision), the Commissioner must have regard to the following:

- (a) the nature of the circumstances mentioned in paragraph (1)(b);
- (b) any other matters that the Commissioner considers relevant.

**109RD(4) [Effect of decision]** This Division is taken not to operate with the result mentioned in paragraph (1)(a) if:

- (a) the Commissioner makes a decision under subsection (2); and
- (b) the recipient pays the private company the amount of the shortfall within the specified time.

**109RD(5) [Restriction]** Despite subsection 33(3A) of the *Acts Interpretation Act 1901*, each decision made under subsection (2) must relate only to one amount that would be taken to be a dividend paid by the private company (disregarding this section).

### ***Subdivision E — Payments and loans through interposed entities***

#### **SECTION 109S SIMPLIFIED OUTLINE OF THIS SUBDIVISION**

**109S** The following is a simplified outline of this Subdivision:

This Subdivision allows a private company to be taken under Subdivision B to pay a dividend to an entity (the *target entity*) if an entity interposed between the private company and the target entity makes a payment or loan to the target entity under an arrangement involving the private company.

This result is achieved by treating the private company as making a payment or loan of an amount determined by the Commissioner to the target entity (according to whether the interposed entity made a payment or loan to the target entity). (See sections 109V (for payments) and 109W (for loans).)

The arrangement must involve the private company and one or more interposed entities in making payments or loans or giving loan guarantees for the purpose of the target entity receiving a payment or loan from an interposed entity. (See sections 109T, 109U and 109UA.)

If the target entity repays a fraction of the loan made by the interposed entity, the target entity is treated as repaying the same fraction of the loan taken to have been made by the private company. (See subsection 109W(3).)

Some provisions that prevent payments or loans from giving rise to dividends do not apply to payments or loans this Subdivision treats a private company as making. (See section 109X.)

#### SECTION 109T PAYMENTS AND LOANS BY A PRIVATE COMPANY TO AN ENTITY THROUGH ONE OR MORE INTERPOSED ENTITIES

**109T(1) [When Division operates]** This Division operates as if a private company makes a payment or loan to an entity (the *target entity*) as described in section 109V or 109W if:

- (a) the private company makes a payment or loan to another entity (the *first interposed entity*) that is interposed between the private company and the target entity; and
- (b) a reasonable person would conclude (having regard to all the circumstances) that the private company made the payment or loan solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
- (c) either:
  - (i) the first interposed entity makes a payment or loan to the target entity; or
  - (ii) another entity interposed between the private company and the target entity makes a payment or loan to the target entity.

**109T(2) This section operates regardless of certain factors.** For the purposes of this section, it does not matter:

- (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the payment or loan from the private company; or
- (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company paid or lent the first interposed entity.

**109T(3) This section does not operate if the payment or loan to the first interposed entity is treated as a dividend.** This Division does not operate as described in subsection (1) (and sections 109V and 109W) if the private company is taken under Subdivision B (as it applies apart from this Subdivision) to pay a dividend as a result of the payment or loan to the first interposed entity.

#### SECTION 109U PAYMENTS AND LOANS THROUGH INTERPOSED ENTITIES RELYING ON GUARANTEES

**109U(1) [Operation of Division]** This Division operates as if a private company makes a payment to an entity (the *target entity*) as described in section 109V if:

- (a) during a year of income the private company guarantees a loan made by another entity (the *first interposed entity*); and



- (b) a reasonable person would conclude (having regard to all the circumstances) that the private company gave the guarantee solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
- (c) either:
  - (i) the first interposed entity that is a private company makes a loan to the target entity; or
  - (ii) another entity that is a private company interposed between the private company and the target entity makes a payment or loan to the target entity; and
- (d) the amount of the payment or the loan is greater than the amount worked out using the formula:

**Distributable surplus – Subsection 109Y(3) amount**

**109U(2) [Calculation of reduction]** The amount of the payment from the private company to the target entity (as worked out under section 109V) is to be reduced by the amount worked out using the formula:

**Distributable surplus – Subsection 109Y(3) amount**

**109U(3) [Definitions]** In the formulas in paragraph (1)(d) and subsection (2):

*distributable surplus* means the distributable surplus (worked out under subsection 109Y(2)) for the interposed entity that made the payment or loan to the target entity for the year of income.

*subsection 109Y(3) amount* means the total of any amounts calculated under subsection 109Y(3) in relation to that interposed entity for the year of income (apart from as a result of the operation of this section).

**109U(4) This section operates regardless of certain factors.** For the purposes of this section, it does not matter:

- (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the guarantee from the private company; or
- (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company guaranteed.

**SECTION 109UA CERTAIN LIABILITIES UNDER GUARANTEES TREATED AS PAYMENTS**

**109UA(1) [Operation]** Section 109T operates as if one entity (the *first entity*) makes a payment to a second entity if the first entity guarantees a loan the second entity makes to a third entity (the *target entity*) and, as a result of the guarantee, the first entity has a liability (other than a contingent liability) to make a payment to the second entity.

Example:

A private company guarantees a loan that a bank makes to a shareholder in the private company and the shareholder defaults on the loan. As a result, the company has a presently existing liability to make a payment to the bank. Section 109T operates as if the private company had made a payment to the bank, so the company is treated by section 109V as making a payment to the shareholder (because the bank is interposed between company and shareholder).

**109UA(2) [Reduction of payment]** The amount of the payment (as worked out under section 109V) is to be reduced by any amount treated as a dividend as a result of the operation of section 109U in relation to the payment or loan made by the interposed entity to the target entity.

**109UA(3) [Where dividend deemed not to be paid]** A private company is not taken under this Division to pay a dividend because of the operation of subsection (1) in relation to a guarantee if the Commissioner is satisfied that:

- (a) the target entity would suffer undue hardship if the private company were taken to pay a dividend to the entity because of the liability; and
- (b) when the target entity entered into the loan, the entity had the capacity to pay the loan.

**109UA(4) [Section 109T operation]** This section does not limit the operation of section 109T.

**109UA(5) [Application]** Subsection (1) does not apply if:

- (a) as a result of the first entity's liability mentioned in that subsection, the target entity has a liability (other than a contingent liability) to make a payment to the first entity; and
- (b) because of section 109N, the liability to make a payment to the first entity is not treated under this Division as giving rise to a dividend paid to the first entity.

#### **SECTION 109V AMOUNT OF PRIVATE COMPANY'S PAYMENT TO TARGET ENTITY THROUGH ONE OR MORE INTERPOSED ENTITIES**

**109V(1) Private company taken to pay if target entity is paid.** If the target entity is paid an amount by the interposed entity, this Division operates as if the private company had paid the amount (if any) determined by the Commissioner to the target entity when the interposed entity paid the target entity.

**109V(2) Determining the amount of the private company's payment.** In determining the amount of the payment the private company is taken to have made, the Commissioner must take account of:

- (a) the amount the interposed entity paid the target entity; and
- (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

#### **SECTION 109W PRIVATE COMPANY'S LOAN TO TARGET ENTITY THROUGH ONE OR MORE INTERPOSED ENTITIES**

**109W(1) Private company taken to lend if target entity receives loan.** If the target entity is lent an amount by the interposed entity, this Division operates as if the private company had made a loan (the *notional loan*) of the amount (if any) determined by the Commissioner to the target entity when the interposed entity made the loan to the target entity.

Note: Subsection 109D(4) specifies the time at which a loan is made.

**109W(2) How big is the notional loan?** In determining the amount of the notional loan, the Commissioner must take account of:

- (a) the amount the interposed entity lent the target entity; and



- (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

**109W(3) Notional repayments of notional loan.** When working out whether the private company is taken under section 109D to pay a dividend as a result of the notional loan, and the amount of any such dividend, assume that the target entity repays an amount of the notional loan equal to the amount worked out using the formula:

$$\frac{\text{Repayment made by target entity to lender}}{\text{Amount actually lent to target entity}} \times \frac{\text{Amount of notional loan}}{\text{Amount actually lent to target entity}}$$

where:

*amount actually lent to target entity* is the amount the interposed entity lent to the target entity.

*repayment made by target entity to lender* is the amount of any repayment made by the target entity of the loan the interposed entity made to the target entity.

## SECTION 109X OPERATION OF SUBDIVISION D IN RELATION TO PAYMENT OR LOAN

**109X(1) Payment or loan not affected by being made through interposed entity.** Despite sections 109K and 109L, a private company may be taken under section 109C or 109D to pay a dividend as a result of this Subdivision treating the private company as making a payment or loan to an entity (the *target entity*), even if:

- (a) the private company is treated that way because it makes a payment or loan to an entity that is a company interposed between the private company and the target entity; or
- (b) some or all of the amount paid or lent by a private company to an entity interposed between the private company and the target entity is included in the interposed entity's assessable income for a year of income.

**109X(2) [Application to certain notional loans]** Subsections (3) and (4) apply if a notional loan arises under section 109W because an entity interposed between the private company and the target entity makes a loan (the *actual loan*) to the target entity.

**109X(3) [Notional loan agreement]** For the purposes of section 109N, treat the agreement under which the actual loan was made as the agreement under which the notional loan was made.

**109X(4) [Notional loan]** For the purposes of section 109E:

- (a) treat the notional loan as an amalgamated loan from the private company to the target entity; and
- (b) treat the amount of the notional loan worked out under subsection 109W(1) as the amount of the amalgamated loan; and
- (c) treat the agreement under which the actual loan was made as the agreement under which the amalgamated loan was made; and

- (d) treat repayments by the target entity of the amount of the notional loan worked out under subsection 109W(3) as payments by the target entity to the private company in relation to the amalgamated loan.

*Subdivision EA — Unpaid present entitlements*

**SECTION 109XA PAYMENTS, LOANS AND DEBT FORGIVENESS BY A TRUSTEE IN FAVOUR OF A SHAREHOLDER ETC. OF A PRIVATE COMPANY WITH AN UNPAID PRESENT ENTITLEMENT**

**109XA(1) Payments.** Section 109XB applies if:

- (a) a trustee makes a payment to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the *actual transaction*); and
- (b) the payment is a discharge of or a reduction in a present entitlement of the shareholder or associate that is wholly or partly attributable to an amount that is an unrealised gain; and
- (c) either:
  - (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
  - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

**109XA(2) Loans.** Section 109XB applies if:

- (a) a trustee makes a loan to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the *actual transaction*); and
- (b) either:
  - (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
  - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.



**109XA(3) Forgiven debts.** Section 109XB applies if:

- (a) all or part of a debt owed to a trustee by a shareholder or an associate of a shareholder of a private company is forgiven (except where the shareholder or associate is a company) (the *actual transaction*); and
- (b) either:
  - (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
  - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

**109XA(4) Amount involved in the actual transaction.** The amount involved in the actual transaction is the lesser of:

- (a) the amount actually involved in the actual transaction; and
- (b) the amount worked out using the formula:

$$\text{Unpaid present entitlement} \quad - \quad \text{Previous transactions}$$

where:

*previous transactions* means the sum of:

- (a) the amounts that, because of previous applications of section 109UB (as in force before the commencement of this section) have been taken to be loans; and
- (b) the amounts that, because of previous applications of this Subdivision, have been included in an entity's assessable income;

in relation to the unpaid present entitlement.

*unpaid present entitlement* means:

- (a) in a case mentioned in subparagraph (1)(c)(i), (2)(b)(i) or (3)(b)(i) — the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph; and
- (b) in a case mentioned in subparagraph (1)(c)(ii), (2)(b)(ii) or (3)(b)(ii) — the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph.

**109XA(5) The amount of the actual transaction where the entitlement is only partly attributable to an unrealised gain.** For the purposes of subsection (4), where the actual transaction was a payment and that payment was only partly attributable to an amount that is an unrealised gain, the amount of the actual transaction is taken to be the amount of the payment that was attributable to the amount that is the unrealised gain.

**109XA(6) Creation of a present entitlement is not a payment.** The creation of a present entitlement to the capital or income of a trust estate is not, of itself, a payment for the purposes of this Subdivision.

**109XA(7) Meaning of *unrealised gain*.** In this section:

*unrealised gain*, in relation to a trust estate and an actual payment, means any unrealised gain, whether of a capital or income nature, but does not include an unrealised gain to the extent that it has been or would be included in the assessable income of the trust, apart from this Division, for:

- (a) a year of income before the year in which the actual payment was made; or
- (b) the year of income in which the actual payment was made; or
- (c) the year of income following the year in which the actual payment was made.

## **SECTION 109XB AMOUNTS INCLUDED IN ASSESSABLE INCOME**

**109XB(1) [“Notional companies”]** An amount is included, as if it were a dividend, in the assessable income of the shareholder or associate referred to in subsection 109XA(1), (2) or (3) if:

- (a) had the actual transaction been done by a private company (the *notional company*); and
- (b) had the shareholder or associate been a shareholder of the notional company at the time the actual transaction took place;

an amount (the *Division 7A amount*) would have been included in the shareholder’s or associate’s assessable income because of a provision of this Division outside this Subdivision.

**109XB(2) [“Division 7A amount”]** Subject to section 109Y, the amount that is included under subsection (1) is the Division 7A amount.

Note: There are some modifications of this Division for the purposes of working out the Division 7A amount: see section 109XC.

## **SECTION 109XC MODIFICATIONS**

**109XC(1) Modifications for this Subdivision only.** The modifications in this section have effect for the purposes of the operation of this Subdivision.

**109XC(2) General modifications.** This Division (but not this Subdivision) applies to an actual transaction done by a trustee of a trust estate with these modifications:

- (a) a reference (except in section 109Y) to an amount paid to a private company has effect as a reference to an amount paid to the trustee; and
- (b) a reference to a year of income of a private company has effect as a reference to the corresponding year of income of the trust estate; and
- (c) a reference to the ordinary course of a private company’s business has effect as a reference to the ordinary course of the trust estate’s business.

**109XC(4) Modified operation of section 109J.** Section 109J does not apply to a payment to the extent that it is a discharge of or a reduction in a present entitlement.

**109XC(6) Modified operation of section 109R.** For the purposes of applying section 109R to an actual transaction:

- (a) a reference in that section to obtaining a loan from a private company has effect as a reference to obtaining a loan from the trustee; and



- (b) a reference in that section to property transferred to a private company has effect as a reference to property transferred to the trustee; and
- (c) a reference in that section to an amount paid by a private company for a transfer of property has effect as a reference to an amount paid by the trustee for a transfer of property.

**109XC(7) Modified operation of section 109Y.** Section 109Y applies to the Division 7A amount in this way:

- (a) assume that the private company referred to in subsection 109XA(1), (2) or (3) had been taken to have paid a dividend to the shareholder or associate referred to in that subsection equal to the Division 7A amount; and
- (b) assume that the dividend was taken to have been paid at the end of the year of income of the company in which the actual transaction took place; and
- (c) a reference in that section to a private company's distributable surplus has effect as a reference to the distributable surplus of the private company referred to in paragraph (a).

**109XC(8) Certain provisions do not apply.** Subsection 109D(1A), sections 109K, 109NA and 109NB and paragraphs 109R(3)(a), (b) and (ba) do not apply to an actual transaction.

***Subdivision F — General rules applying to all amounts treated as dividends***

**SECTION 109Y PROPORTIONAL REDUCTION OF DIVIDENDS SO THEY DO NOT EXCEED DISTRIBUTABLE SURPLUS**

**109Y(1) Reduction of amounts of dividends.** If, apart from this section, the sum of all the dividends a private company is taken under this Division to pay at the end of the year of income would be more than the company's distributable surplus for that year, the amount of each of those dividends is the amount worked out under subsection (3).

**109Y(2) Distributable surplus.** A private company's *distributable surplus* for its year of income is the amount worked out using the formula:

$$\text{Net assets} - \text{Non-commercial loans} - \text{Paid-up share value} - \text{Repayments of non-commercial loans}$$

where:

*net assets* means the amount (if any), at the end of the company's year of income, by which the company's assets (according to the company's accounting records) exceed the sum of:

- (a) the present legal obligations of the company to persons other than the company; and
- (b) the following provisions (according to the company's accounting records):
  - (i) provisions for depreciation;
  - (ii) provisions for annual leave and long service leave;
  - (iii) provisions for amortisation of intellectual property and trademarks;

- (iv) other provisions prescribed under regulations made for the purposes of this subparagraph.

If the Commissioner considers that the company's accounting records significantly undervalue or overvalue its assets or undervalue or overvalue its provisions, the Commissioner may substitute a value that the Commissioner considers is appropriate.

*non-commercial loans* is the total of any amounts the company is taken under former section 108, 109D or 109E to have paid as dividends in earlier years of income as are shown as assets in the company's accounting records at the end of the year of income.

*paid-up share value* is the paid-up share capital of the company at the end of its year of income.

*repayments of non-commercial loans* means the total of:

- (a) any repayments to the company of loans or amounts that have been taken by former section 108, or section 109D or 109E to be dividends; and
- (b) amounts set off against loans that have been taken by former section 108, or section 109D or 109E to be dividends, other than such amounts that are set off as a result of:
  - (i) a dividend (being a later dividend for the purposes of section 109ZC or a subsequent dividend for the purposes of former subsection 108(2)) being paid by the company to the extent of the unfranked part of the dividend; or
  - (ii) a loan, or a part of a loan, being forgiven.

**109Y(3) [Calculation of payment]** The amount of a dividend that a private company is taken under this Division to pay is worked out using the formula:

$$\text{Provisional dividend} \times \frac{\text{Distributable surplus for year of income}}{\text{Total of provisional dividends}}$$

where:

*provisional dividend* is the amount of the dividend that the private company would be taken to pay apart from this section.

*total of provisional dividends* is the sum of all the dividends the private company is taken under this Division to pay at the end of the year of income apart from this section.

**109Y(4) Requirement for private company to provide statement.** If this section sets the amount of a dividend taken under this Division to be paid by a private company to an entity at the end of a year of income, the private company must give the entity a written statement as soon as possible after the end of the year of income.

**109Y(5) What the statement must contain.** The statement must set out:

- (a) the private company's distributable surplus for the year of income; and
- (b) the total amount the company would be taken under this Division to pay as dividends in the year of income apart from this section.



**SECTION 109Z CHARACTERISTICS OF DIVIDENDS TAKEN TO BE PAID UNDER THIS DIVISION**

**109Z** If a private company is taken under this Division to have paid a dividend to an entity, the dividend is taken for the purposes of this Act to be paid:

- (a) to the entity as a shareholder in the private company; and
- (b) out of the private company's profits.

**SECTION 109ZA NO DIVIDEND TAKEN TO BE PAID FOR WITHHOLDING TAX PURPOSES**

**109ZA** If a private company is taken under this Division to have paid a dividend to an entity, disregard the dividend for the purposes of:

- (a) Division 11A of Part III (which deals with withholding tax on dividends paid to non-residents and some other people); and
- (c) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (which deals with PAYG withholding).

**SECTION 109ZB AMOUNT TREATED AS DIVIDEND IS NOT A FRINGE BENEFIT**

**109ZB(1) [Application to loans]** This Division applies to a loan of an amount to an entity by a private company, even if the loan is made:

- (a) to the entity in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
- (b) in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that a loan is not a fringe benefit for the purposes of that Act.

**109ZB(2) [Application to debt forgiveness]** This Division applies to a private company's forgiveness of a debt owed by an entity to the private company, even if:

- (a) the entity owed the debt in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
- (b) the forgiveness occurs in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that the forgiveness of a debt is not a fringe benefit for the purposes of that Act.

**109ZB(3) [Employees]** However, this Division does not apply to a payment made to a shareholder, or an associate of a shareholder, in their capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee.

**SECTION 109ZC TREATMENT OF DIVIDEND THAT IS REDUCED ON ACCOUNT OF AN AMOUNT TAKEN UNDER THIS DIVISION TO BE A DIVIDEND**

**109ZC(1) [Later dividend rules]** This section sets out special rules for dealing with a dividend (the *later dividend*) distributed by a private company if some or all of the later dividend is set off against some or all of an amount taken under this Division to be a dividend previously paid by the company.

Example:

Some or all of a dividend distributed by a private company to a shareholder might be set off to reduce a loan the company had previously made to the shareholder that was treated as a dividend under Subdivision B.

**109ZC(1A) [Repayment of certain loans from distributing company]** This section also sets out special rules for dealing with a dividend (also the *later dividend*) distributed by a private company if:

- (a) the private company distributes the later dividend to a shareholder in the company; and
- (b) the shareholder applies the amount of the dividend to repay all or part of a loan:
  - (i) that was obtained from the private company by an associate of the shareholder; and
  - (ii) in relation to which a dividend was previously taken under this Division to have been paid by the private company.

**109ZC(2) [Set off not dividend]** The amount of the later dividend set off or applied is taken not to be a dividend for the purposes of this Act, except Part 3-6 of the *Income Tax Assessment Act 1997* (which deals with franking of distributions). However, if the amount set off or applied exceeds the amount of the later dividend that is not either the franked part of that dividend, or the part of that dividend that has been franked with an exempting credit, the excess is still a dividend.

**Note:** This prevents double taxation by ensuring that the entity's assessable income does not include the amount of the later dividend that is not paid to the entity (except to the extent that that amount is franked).

**109ZC(3) [Excluded amounts]** An amount that is taken not to be a dividend under subsection (2) is not assessable income and is not exempt income.

### ***Subdivision G — Defined terms***

#### **SECTION 109ZD DEFINED TERMS**

**109ZD** In this Division:

***amalgamated loan*** has the meaning given by subsection 109E(3).

***arrangement*** has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

***associate*** has the meaning given by section 318.

***benchmark franking percentage*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***benchmark interest rate*** for a year of income has the meaning given by subsection 109N(2).

***deficit*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***distributable surplus*** of a company for a year of income has the meaning given by subsection 109Y(2).

***entity*** has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

***family law obligation*** means an order, agreement or award mentioned in paragraph 126-5(1)(a), (b), (d), (e) or (f) of the *Income Tax Assessment Act 1997*.



*forgive* a debt has the meaning given by section 109F.

*franking account* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franking percentage* has the same meaning as in the *Income Tax Assessment Act 1997*.

*franking period* has the same meaning as in the *Income Tax Assessment Act 1997*.

*guarantee*, in relation to a loan, includes providing security for the loan.

*loan* has the meaning given by subsection 109D(3).

*lodgment day* for a private company's year of income has the meaning given by subsection 109D(6).

*payment* has the meaning given by subsection 109C(3).

*unfrankable* has the same meaning as in the *Income Tax Assessment Act 1997*.

## SECTION 109ZE INTERPRETATION RULES ABOUT ENTITIES

**109ZE** The rules in section 960-100 of the *Income Tax Assessment Act 1997* about entities apply to this Division.

\* \* \*

## Division 17 — Rebates

### *Subdivision A — Concessional rebates*

\* \* \*

## SECTION 159N REBATE FOR CERTAIN LOW-INCOME TAXPAYERS

**159N(1) [When taxpayer eligible]** If a taxpayer's taxable income of a year of income is less than \$63,750, the taxpayer is entitled to a rebate of tax in the taxpayer's assessment for the year of income.

**159N(2) [Amount of rebate]** The amount of the rebate is \$1,350, reduced by 4 cents for every \$1 of the amount (if any) by which the taxpayer's taxable income of the year of income exceeds \$30,000.

\* \* \*

# INCOME TAX ASSESSMENT ACT 1997 (Extracts)

## TABLE OF PROVISIONS

### Section

#### CHAPTER 1 — INTRODUCTION AND CORE PROVISIONS

...

#### PART 1-3 — CORE PROVISIONS

#### Division 4 — How to work out the income tax payable on your taxable income

4-1 Who must pay income tax

...

4-10 How to work out how much income tax you must pay

4-15 How to work out your taxable income

...

#### Division 6 — Assessable income and exempt income

...

6-5 Income according to ordinary concepts (*ordinary income*)

6-10 Other assessable income (*statutory income*)

6-15 What is *not* assessable income

...

#### Division 8 — Deductions

8-1 General deductions

...

8-10 No double deductions

#### PART 1-4 — CHECKLISTS OF WHAT IS COVERED BY CONCEPTS USED IN THE CORE PROVISIONS

...

#### Division 11 — Particular kinds of non-assessable income

##### *Subdivision 11-A — Lists of classes of exempt income*

...

11-10 Ordinary or statutory income which is exempt, no matter whose it is

...

#### CHAPTER 2 — LIABILITY RULES OF GENERAL APPLICATION

#### PART 2-1 — ASSESSABLE INCOME

#### Division 15 — Some items of assessable income

15-1 What this Division is about

15-2 Allowances and other things provided in respect of employment or services

15-3 Return to work payments

15-5 Accrued leave transfer payments

15-10 Bounties and subsidies

15-15 Profit-making undertaking or plan

15-20 Royalties

15-22 Payments made to members of a copyright collecting society

15-25 Amount received for lease obligation to repair

15-30 Insurance or indemnity for loss of assessable income

15-35 Interest on overpayments and early payments of tax

15-40 Providing mining, quarrying or prospecting information